
STATUTORY INSTRUMENTS

2016 No. 790

ENTERPRISE, ENGLAND AND WALES

The Pubs Code etc. Regulations 2016

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SCHEDULE 1 — Information specified for the purposes of a new agreement etc.

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The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 42(1) and (4), 43(1), (3) and (5) to (9), 44, 45, 47(1) to (3), 48(3), 69(6) and (8)(b), 71(1)(a) and (2) and 161(2) of the Small Business, Enterprise and Employment Act 2015(a).

In accordance with sections 73(1) and 161(4) of the Small Business, Enterprise and Employment Act 2015, a draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

General

Citation, commencement and extent

1. These Regulations—

- (a) may be cited as the Pubs Code etc. Regulations 2016;
- (b) come into force on the day after the day on which they are made; and
- (c) extend to England and Wales.

(a) 2015 c.26.

General interpretation

2.—(1) In these Regulations—

“annual percentage change in the consumer price index” means the annual change in the general index of consumer prices (for all items), as published by the Statistics Board^(a) with the identifying code D7G7;

“business development manager” has the meaning given in regulation 41(6);

“commencement date” means the date on which these Regulations come into force;

“compliance officer” means a person who is appointed under regulation 42(1);

“fixed share of turnover” has the meaning given in regulation 55(4);

“full response” has the meaning given in regulation 29(5);

“gaming machine” has the meaning given in section 235 of the Gambling Act 2005^(b);

“initial or revised rent” has the meaning given in regulation 16(1)(a);

“insurance charge” has the meaning given in regulation 46(1);

“investment agreement” has the meaning given in regulation 56(3);

“MRO notice” has the meaning given in regulation 23(1);

“MRO rent” means the rent or money payable in lieu of rent payable in respect of the tied pub tenant’s^(c) occupation of the premises concerned under an MRO-compliant tenancy or licence^(d);

“new agreement” means a new tenancy of, or a new licence to occupy, premises which are, or are expected to be, a tied pub but does not include a short agreement or the renewal of a tenancy or licence;

“new rent” has the meaning given in regulation 20(1)(a);

“period of response” has the meaning given in regulation 29(7) to (9);

“protected 1954 Act tenancy” means a tenancy—

(a) to which Part 2 of the Landlord and Tenant Act 1954^(e) applies, and

(b) which is not a tenancy in relation to which the provisions of sections 24 to 28 of that Act have been excluded by virtue of section 38A(1) of that Act;

“pub franchise agreement” has the meaning given in regulation 55(2);

“pubs entry training” has the meaning given in regulation 9(4);

“relevant share of turnover” has the meaning given in regulation 55(5);

“rent proposal” means a proposal made in accordance with Part 3;

“rent assessment proposal” means a proposal made in accordance with Part 4;

“rent review date” has the meaning given in regulation 21(12);

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

(a) The Statistics Board is established by section 1 of the Statistics and Registration Service Act 2007 (c.18). In Welsh, the Statistics Board is known as Y Bwrdd Ystadegau.

(b) 2005 c.19.

(c) Section 70(1) of SBEEA 2015 defines “tied pub tenant”.

(d) Section 43 of SBEEA 2015 defines “MRO-compliant”. Section 70(2) of SBEEA 2015 defines “tenancy” and “licence”.

(e) 1954 c.56. Part 2 was amended by: paragraph 29 of Schedule 1 to the Agriculture Act 1958 (c.71); sections 1 to 14 of the Law of Property Act 1969 (c.59); section 47 of, and Schedule 3 to, the Land Compensation Act 1973 (c.26); Schedule 26 to the Housing Act 1980 (c.51); paragraph 4 of Schedule 33 to the Local Government, Planning and Land Act 1980 (c.65); paragraph 3 of Schedule 13, and paragraph 21 of Schedule 14, to the Agricultural Holdings Act 1986 (c.5); section 149 of, and Schedule 7 to, the Local Government and Housing Act 1989 (c.42); sections 1 and 2(2) of the Landlord and Tenant (Licenced Premises) Act 1990 (c.39); paragraph 10 of the Schedule to the Agricultural Tenancies Act 1995 (c.8); paragraphs 3 and 4(2) of Schedule 1 to the Landlord and Tenant (Covenants) Act 1995 (c.30); sections 35(2) to (4) and 36(1) of the Small Business, Enterprise and Employment Act 2015 (c.26); and S.I. 1990/1285, 2003/3096, 2009/1307, S.I. 2009/1941.

“SBEEA 2015” means the Small Business, Enterprise and Employment Act 2015;

“Schedule of Condition” means the provisions in a tenancy or licence which specify the condition of the premises to which the tenancy or licence relates;

“short agreement” means—

- (a) a tenancy at will which entitles a tied pub tenant to occupy a tied pub; or
- (b) any other contractual agreement entitling a tied pub tenant to occupy a tied pub for no more than 12 months;

“significant increase”, in relation to the price at which a product or service which is subject to a product or service tie(a) is supplied to a tied pub tenant, has the meaning given in regulations 3 to 6;

“subsequent proposed tenancy or licence” has the meaning given in regulation 35(2);

“the RICS” means the Royal Institution of Chartered Surveyors;

“the RICS guidance” means guidance issued by the RICS, as amended from time to time;

“trigger event” has the meaning given by section 43(9) of SBEEA 2015 and regulation 7.

(2) For the purposes of these Regulations, a tied pub tenant receives notification of a significant increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant when the tied pub tenant receives the invoice the issue of which constitutes such an increase.

Significant increase in price: beer

3.—(1) For the purposes of these Regulations, a “significant increase” in the price of a beer product (“the relevant product”) supplied to a tied pub tenant takes place on the issue to the tied pub tenant of an invoice for that product (“the relevant invoice”) where—

- (a) the relevant product has previously been supplied to the tied pub tenant,
- (b) the unit price of that product on the relevant invoice is higher than its unit price on the most recent previous invoice for that product issued to the tied pub tenant, and
- (c) the following two conditions are met.

(2) The first condition is that one or more invoices for the relevant product were issued to the tied pub tenant in the comparison period.

(3) The second condition is that—

$$\left(\frac{A - B}{B} \times 100 \right) > C + 3$$

where—

A is the amount that comparison period beer would have cost the tied pub tenant if it had been invoiced at current period prices;

B is the amount that comparison period beer cost the tied pub tenant at the prices actually invoiced;

C is the relevant annual percentage change in the consumer price index or, where that is negative, zero.

(4) In this regulation—

- (a) “beer product” means a product which is beer and which is supplied under a product tie(b);

(a) Section 72(1) of SBEEA 2015 defines “product or service tie”.

(b) Section 72(1) of SBEEA 2015 defines “product tie”.

- (b) “comparison period beer” means all beer products invoiced to the tied pub tenant in the comparison period, in the quantities so invoiced, but excluding any beer product for which no invoice was issued to the tied pub tenant in the current period;
- (c) “current period” means the period of 4 weeks ending with the day on which the relevant invoice is issued;
- (d) “the comparison period” means the period of 4 weeks ending with the day 12 months before the day on which the relevant invoice is issued;
- (e) “current period price”, in relation to a beer product, means the price of that product on the last invoice for that product issued during the current period;
- (f) “invoice for a beer product” includes an invoice which covers (in addition to beer products) products other than beer products, or services; and references to a beer product being invoiced are to be read accordingly;
- (g) “the relevant annual percentage change in the consumer price index” means the annual percentage change in the consumer price index most recently published before the day on which the relevant invoice is issued, in respect of the most recent month covered by that publication.

(5) The prices to be used in determining the unit price of the relevant product for the purposes of paragraph (1), and in calculating A and B for the purposes of paragraph (3), are prices—

- (a) excluding value added tax and excise duty; and
- (b) disregarding the effect of any discounts which the pub-owning business was not contractually required to give to the tied pub tenant.

(6) For the purposes of this regulation, beer products invoiced to the tied pub tenant are different beer products if—

- (a) they have different names on the invoice or invoices in question, or
- (b) they are invoiced in different units (for example, in units of different size or capacity).

Significant increase in price: alcoholic drink other than beer

4. For the purposes of these Regulations, a “significant increase” in the price of an alcoholic drink product (“the relevant product”) supplied to a tied pub tenant takes place on the issue to the tied pub tenant of an invoice for that product (“the relevant invoice”) where—

- (a) the relevant product has previously been supplied to the tied pub tenant,
- (b) the unit price of that product on the relevant invoice is higher than its unit price on the most recent previous invoice for that product issued to the tied pub tenant, and
- (c) the following two conditions are met.

(2) The first condition is that one or more invoices for the relevant product were issued to the tied pub tenant in the comparison period.

(3) The second condition is that—

$$\left(\frac{A - B}{B} \times 100 \right) > C + 8$$

where—

A is the amount that comparison period alcoholic drink would have cost the tied pub tenant if it had been invoiced at current period prices;

B is the amount that comparison period alcoholic drink cost the tied pub tenant at the prices actually invoiced;

C is the relevant annual percentage change in the consumer price index or, where that is negative, zero.

(4) In this regulation—

- (a) “alcoholic drink product” means a product which—

- (i) is an alcoholic drink other than beer, and
 - (ii) is supplied under a product tie;
 - (b) “comparison period alcoholic drink” means all alcoholic drink products invoiced to the tied pub tenant in the comparison period, in the quantities so invoiced, but excluding any alcoholic drink product for which no invoice was issued to the tied pub tenant in the current period;
 - (c) “current period” means the period of 4 weeks ending with the day on which the relevant invoice is issued;
 - (d) “the comparison period” means the period of 4 weeks ending with the day 12 months before the day on which the relevant invoice is issued;
 - (e) “current period price”, in relation to an alcoholic drink product, means the price of that product on the last invoice for that product issued during the current period;
 - (f) “invoice for an alcoholic drink product” includes an invoice which covers (in addition to alcoholic drink products) products other than alcoholic drink products, or services; and references to an alcoholic drink product being invoiced are to be read accordingly;
 - (g) “the relevant annual percentage change in the consumer price index” means the annual percentage change in the consumer price index most recently published before the day on which the relevant invoice is issued, in respect of the most recent month covered by that publication.
- (5) The prices to be used in determining the unit price of the relevant product for the purposes of paragraph (1), and in calculating A and B for the purposes of paragraph (3), are prices—
- (a) excluding value added tax and excise duty; and
 - (b) disregarding the effect of any discounts which the pub-owning business was not contractually required to give to the tied pub tenant.
- (6) For the purposes of this regulation, alcoholic drink products invoiced to the tied pub tenant are different alcoholic drink products if—
- (a) they have different names on the invoice or invoices in question, or
 - (b) they are invoiced in different units (for example, in units of different size or capacity).

Significant increase in price: products other than alcoholic drink

5.—(1) For the purposes of these Regulations, a “significant increase” in the price of a non-alcohol product (“the relevant product”) supplied to a tied pub tenant takes place on the issue to the tied pub tenant of an invoice for that product (“the relevant invoice”) where—

- (a) the relevant product has previously been supplied to the tied pub tenant,
- (b) the unit price of that product on the relevant invoice is higher than its unit price on the most recent previous invoice for that product issued to the tied pub tenant, and
- (c) the following two conditions are met.

(2) The first condition is that one or more invoices for the relevant product were issued to the tied pub tenant in the comparison period.

(3) The second condition is that—

$$\left(\frac{A - B}{B} \times 100 \right) > C + 20$$

where—

A is the amount that comparison period non-alcohol products would have cost the tied pub tenant if they had been invoiced at current period prices;

B is the amount that comparison period non-alcohol products cost the tied pub tenant at the prices actually invoiced;

C is the relevant annual percentage change in the consumer price index or, where that is negative, zero.

(4) In this regulation—

- (a) “non-alcohol product” means a product which—
 - (i) is a product that is not an alcoholic drink, and
 - (ii) is supplied under a product tie;
- (b) “comparison period non-alcohol products” means all non-alcohol products invoiced to the tied pub tenant in the comparison period, in the quantities so invoiced, but excluding any non-alcohol product for which no invoice was issued to the tied pub tenant in the current period;
- (c) “current period” means the period of 4 weeks ending with the day on which the relevant invoice is issued;
- (d) “the comparison period” means the period of 4 weeks ending with the day 12 months before the day on which the relevant invoice is issued;
- (e) “current period price”, in relation to a non-alcohol product, means the price of that product on the last invoice for that product issued during the current period;
- (f) “invoice for a non-alcohol product” includes an invoice which covers (in addition to non-alcohol products) products other than non-alcohol products, or services; and references to a non-alcohol product being invoiced are to be read accordingly;
- (g) “the relevant annual percentage change in the consumer price index” means the annual percentage change in the consumer price index most recently published before the day on which the relevant invoice is issued, in respect of the most recent month covered by that publication.

(5) The prices to be used in determining the unit price of the relevant product for the purposes of paragraph (1), and in calculating A and B for the purposes of paragraph (3), are prices—

- (a) excluding value added tax; and
- (b) disregarding the effect of any discounts which the pub-owning business was not contractually required to give to the tied pub tenant.

(6) For the purposes of this regulation, non-alcohol products invoiced to the tied pub tenant are different non-alcohol products if—

- (a) they have different names on the invoice or invoices in question, or
- (b) they are invoiced in different units (for example, in units of different size or capacity).

Significant increase in price: services

6.—(1) For the purposes of these Regulations, a “significant increase” in the price of a service (“the relevant service”) supplied to a tied pub tenant takes place on the issue to the tied pub tenant of an invoice for that service (“the relevant invoice”) where—

- (a) the relevant service has previously been supplied to the tied pub tenant,
- (b) the unit price of that service on the relevant invoice is higher than its unit price on the most recent previous invoice for that service issued to the tied pub tenant, and
- (c) the following two conditions are met.

(2) The first condition is that one or more invoices for the relevant service were issued to the tied pub tenant in the comparison period.

(3) The second condition is that—

$$\left(\frac{A - B}{B} \times 100 \right) > C + 20$$

where—

A is the amount that comparison period services would have cost the tied pub tenant if they had been invoiced at current period prices;

B is the amount that comparison period services cost the tied pub tenant at the prices actually invoiced;

C is the relevant annual percentage change in the consumer price index or, where that is negative, zero.

(4) In this regulation—

- (a) “service” means a service which is supplied under a service tie^(a);
- (b) “comparison period services” means all services invoiced to the tied pub tenant in the comparison period, in the quantities so invoiced, but excluding any service for which no invoice was issued to the tied pub tenant in the current period;
- (c) “current period” means the period of 4 weeks ending with the day on which the relevant invoice is issued;
- (d) “the comparison period” means the period of 4 weeks ending with the day 12 months before the day on which the relevant invoice is issued;
- (e) “current period price”, in relation to a service, means the price of that service on the last invoice for that service issued during the current period;
- (f) “invoice for services” includes an invoice which covers (in addition to services) products; and references to services being invoiced are to be read accordingly;
- (g) “the relevant annual percentage change in the consumer price index” means the annual percentage change in the consumer price index most recently published before the day on which the relevant invoice is issued, in respect of the most recent month covered by that publication.

(5) The prices to be used in determining the unit price of the relevant service for the purposes of paragraph (1), and in calculating A and B for the purposes of paragraph (3), are prices—

- (a) excluding value added tax; and
- (b) disregarding the effect of any discounts which the pub-owning business was not contractually required to give to the tied pub tenant.

(6) For the purposes of this regulation, services invoiced to the tied pub tenant are different services if—

- (a) they have different names on the invoice or invoices in question, or
- (b) they are invoiced in different units (for example, in units of time of different lengths).

Trigger events

7.—(1) For the purposes of Part 4 of SBEEA 2015 (and so of these Regulations) an event is a “trigger event”, in relation to a tied pub tenant, only if (in addition to meeting the conditions in section 43(9)(a) to (c) of SBEEA 2015)—

- (a) conditions A and B are met; and
- (b) either—
 - (i) the event does not affect pubs other than the tied pub; or
 - (ii) conditions C and D are met.

(2) Condition A is that the effect of the event is to decrease the level of trade that is reasonably expected to be achieved at the tied pub in each month over a continuous period of 12 months.

(3) Condition B is that the event is not—

- (a) connected to the personal circumstances of the tied pub tenant;

(a) Section 72(1) of SBEEA 2015 defines “service tie”.

- (b) a significant increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant;
 - (c) an extrinsic increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant;
 - (d) an event of a kind described in regulation 26 or regulation 27; or
 - (e) an event which the tied pub tenant could reasonably have prevented, or the effects of which it could reasonably have substantially mitigated.
- (4) Condition C is that the event—
- (a) affects other pubs in the local area; but
 - (b) is unlikely to affect all pubs in England or Wales.
- (5) Condition D is that the event—
- (a) is directly related to a change in the tie imposed by the pub-owning business(a) on the tied pub; or
 - (b) has an effect which is directly related to changes in the local area such as—
 - (i) changes to the local infrastructure;
 - (ii) changes to local employment;
 - (iii) long-term changes to the local economic environment;
 - (iv) changes to local environmental factors.
- (6) An “extrinsic increase” in relation to a tied product or service means an increase in the price of the product or service due to circumstances beyond the control of the pub-owning business such as—
- (a) an increase in the price at which the pub-owning business purchases the product or service;
 - (b) an increase in any tax or duty payable by the pub-owning business which arises from the pub-owning business’s purchase of the product or service; or
 - (c) an increase in any other tax or regulatory cost payable by the pub-owning business which affects the costs of the pub-owning business.

Periods of time

8.—(1) This regulation applies where—

- (a) a provision of these Regulations refers to a period of time; and
- (b) that period is computed by reference to the occurrence of one or more of the following events—
 - (i) notifying, requesting, sending, providing or communicating changes, determinations, decisions, intentions, responses, proposals or other information;
 - (ii) the referral of a matter under regulation 59(6)(c) or (8);
 - (iii) receiving notices (including an MRO notice), notifications or requests.

(2) The time at which the events occur, for the purposes of that provision, is to be determined in accordance with the following table.

<i>Method of notifying, requesting, accepting etc.</i>	<i>Day on which notification, request, acceptance, receipt etc. is deemed to have occurred</i>
First class post (or other service which provides for delivery on the next business day)	The second day after it was posted, left with, delivered to or collected by the relevant service

(a) Section 69 of SBEEA 2015 defines “pub-owning business”.

Document exchange	provider, provided that day is a business day; or, if not, the next business day after that day. The second day after it was left with, delivered to or collected by the relevant service provider, provided that day is a business day; or, if not, the next business day after that day.
Delivering a document to or leaving it at a permitted address	If it is delivered to or left at the permitted address on a business day before 4.30 pm, on that day; or in any other case, on the next business day after that day.
Fax	If the transmission of the fax is completed on a business day before 4.30 pm, on that day; or, in any other case, the next business day after the day on which it was transmitted.
Other electronic method	If the e-mail or other electronic transmission is sent on a business day before 4.30 pm, on that day; or in any other case, on the next business day after the day on which it was sent.
Personal service	If the document is served personally before 4.30 pm on a business day, on that day; or, in any other case, on the next business day after that day.

(3) The reference in paragraph (1)(b)(iii) to receiving notifications does not include receiving notification of a significant increase in the price at which a product or service which is subject to a product or service tie is supplied to a tied pub tenant.

(4) In this regulation, “business day” means any day except—

- (a) a Saturday or Sunday;
- (b) Good Friday or Christmas Day; or
- (c) a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(a).

PART 2

Duties of pub-owning businesses in their dealings with their tied pub tenants: general

Pubs entry training

9.—(1) Before—

- (a) entering into a new agreement with a tied pub tenant; or
- (b) agreeing, with a tied pub tenant, the renewal of a protected 1954 Act tenancy,

a pub-owning business must advise the tied pub tenant to complete the appropriate pubs entry training.

(2) The pub-owning business’s duty in paragraph (1) does not apply if the tied pub tenant meets at least one of the conditions in paragraph (3).

(3) The conditions are—

- (a) that the tied pub tenant operates at least one other tied pub, other than a pub which is occupied under a short agreement, on the day on which the new agreement or the renewal is proposed by the pub-owning business or the tied pub tenant;

(a) 1971 c.80.

- (b) that the tied pub tenant can demonstrate that the tenant has at least 3 years of relevant business management experience;
 - (c) that the pub-owning business has, at any time, granted the tenant a tenancy or licence in relation to a tied pub, other than a tenancy or licence in connection with a short agreement.
- (4) “Pubs entry training” means training which is designed to raise awareness of the matters involved in operating a pub and entering into product ties and other agreements with landlords(a).

A sustainable business plan

10.—(1) Before a pub-owning business—

- (a) enters into a new agreement with a tied pub tenant; or
- (b) agrees, with a tied pub tenant, the renewal of a tenancy which is not a protected 1954 Act tenancy,

the pub-owning business must ensure that the tenant has a sustainable business plan.

(2) A “sustainable business plan” is a business plan which—

- (a) has been prepared following consideration of independent professional advice, such as business, legal, property and rental valuation advice;
- (b) includes financial forecasts for the tenancy or licence period, including—
 - (i) estimates of income and expenditure;
 - (ii) a sensitivity analysis;
 - (iii) the impact of any indexation of rent or of other costs referred to in the new agreement or in the renewal; and
- (c) contains a forecast of the income and net profit over the tenancy or licence period which, in the pub-owning business’s opinion, is reasonable for the tenant and realistic.

(3) The pub-owning business must, before the tied pub tenant prepares the business plan—

- (a) identify all reports which —
 - (i) are publicly available;
 - (ii) analyse the trading costs of tied pubs in the United Kingdom, or any area within it, and the costs of the tenancies and licences under which such pubs are occupied; and
 - (iii) provide relevant data against which the tenant can compare the performance of the tied pub for the purposes of preparing the business plan;
- (b) advise the tenant to consult those reports; and
- (c) provide to the tied pub tenant—
 - (i) the reports identified under sub-paragraph (a); or
 - (ii) information as to where, and how, the reports can be obtained.

(4) The pub-owning business’s duty in paragraph (3)(c) does not apply in relation to a report which the tied pub tenant has confirmed to the pub-owning business the tenant has read.

(5) A “sensitivity analysis” is an analysis of—

- (a) the potential business performance of the tied pub in the case of an increase or decrease in business income; and
- (b) the effect of that increase or decrease on the tied pub’s costs and profitability.

(6) The “tenancy or licence period” means the period which—

- (a) begins with the day on which the tenancy or licence first confers on the tied pub tenant the right to occupy; and

(a) Section 70(2) of SBEEA 2015 defines “landlord”.

- (b) ends with the earliest of the following days—
 - (i) the day five years after the day mentioned in sub-paragraph (a);
 - (ii) the last day on which the tenancy or licence confers on the tied pub tenant the right to occupy;
 - (iii) the rent review date.

(7) Where a protected 1954 Act tenancy is renewed, the pub-owning business must—

- (a) identify the reports mentioned in paragraph (3)(a), as if a sustainable business plan were being prepared;
- (b) advise the tenant to consult those reports; and
- (c) provide to the tied pub tenant, before the tenancy is renewed—
 - (i) the reports identified under paragraph (3)(a); or
 - (ii) information to the tenant as to where, and how, the reports can be obtained.

The required information

11.—(1) A pub-owning business must ensure that the tied pub tenant has received the information specified in Schedule 1 before the tenant considers the advice referred to in regulation 10(2)(a).

(2) The pub-owning business is not required to comply with paragraph (1) in respect of any information specified in Schedule 1 which—

- (a) has already been provided to the tied pub tenant by the pub-owning business in connection with the current tenancy or licence; and
- (b) has not changed materially since it was provided.

(3) The “current tenancy or licence” means the tenancy or licence in force at the time the tenant prepares the sustainable business plan.

Duty of pub-owning business where tenant intends to assign the tenancy

12.—(1) This regulation applies where the terms of a tenancy in relation to a tied pub permit the tied pub tenant to assign the tenancy to another person.

(2) Where a tied pub tenant notifies the pub-owning business that the tenant intends to assign the tenancy, the pub-owning business must, as soon as reasonably practicable—

- (a) explain to the tenant and the proposed assignee the implications of the assignment for both; and
- (b) provide the tenant with—
 - (i) information relating to any fees payable by the tenant in respect of the assignment;
 - (ii) information relating to any dilapidations which the pub-owning business requires to be remedied before, or as a condition of, the assignment; and
 - (iii) the information in Schedule 1 or, where that information has already been provided to the tenant under regulation 11(1), any information in that Schedule which has changed materially since it was last provided.

(3) Paragraphs (4) to (7) apply where the tenancy may not be assigned without the pub-owning business’s agreement.

(4) Before agreeing to an assignment, the pub-owning business must be satisfied—

- (a) that the proposed assignee has received the information which was provided to the tenant under regulation 11(1) or under paragraph (2)(b)(iii) of this regulation;
- (b) that the proposed assignee has been advised to complete pubs entry training; and
- (c) that the proposed assignee has been advised to seek independent advice, including advice from a qualified surveyor with professional experience relating to tied pubs.

(5) The pub-owning business's duty at paragraph (4)(b) does not apply if the assignee meets at least one of the conditions in paragraph (6).

(6) The conditions are—

- (a) that the assignee operates at least one other tied pub other than a pub which is occupied under a short agreement on the day on which the notice mentioned in paragraph (2) is given;
- (b) that the assignee can demonstrate that the assignee has at least 3 years of relevant business management experience;
- (c) that the pub-owning business has, at any time, granted the assignee a tenancy or licence in relation to a tied pub, other than a tenancy or licence in connection with a short agreement.

(7) Where the pub-owning business does not agree to the assignment, the pub-owning business must notify the tenant and the assignee as soon as reasonably practicable.

(8) Paragraph (9) applies where—

- (a) the tenancy may not be assigned without the pub-owning business's agreement;
- (b) the pub-owning business and the tied pub tenant have entered into an investment agreement; and
- (c) the tied pub tenant proposes to assign the tenancy.

(9) Before agreeing to the assignment, the pub-owning business must be satisfied that the assignee—

- (a) has been notified, in writing, of the investment agreement and the effect of that agreement on the assignee's right to request a rent assessment or an offer of a market rent only option^(a); and
- (b) has received a copy of that agreement.

Premises

13.—(1) Before entering into a new agreement with a tied pub tenant, a pub-owning business must advise the tenant to—

- (a) conduct a thorough inspection of the premises to which the tenancy or licence relates, including any part of the premises intended to be used as the tenant's home; and
- (b) obtain the advice of a qualified surveyor with professional experience relating to tied pubs.

(2) Paragraph (3) applies where—

- (a) a tied pub tenant and a pub-owning business—
 - (i) enter into a new agreement; or
 - (ii) renew a protected 1954 Act tenancy; and
- (b) before the renewal or before entering into the new agreement, the pub-owning business or the tied pub tenant agrees to carry out any maintenance, repair or improvement works to the premises.

(3) As soon as reasonably practicable after the works are completed, the pub-owning business must update the Schedule of Condition, in the light of the works.

(4) Where, under a tenancy or licence, a tied pub tenant is required to maintain or repair the premises, or any part of the premises, to which the tenancy or licence relates, paragraphs (5) and (6) apply.

(5) Before entering into a new agreement or renewing a protected 1954 Act tenancy, the pub-owning business must take the Schedule of Condition into account—

(a) Section 43(2) of SBEEA 2015 defines "market rent only option".

- (a) during an assessment of any maintenance or repairs in respect of the premises; and
 - (b) before any obligations or liabilities in respect of the condition of the premises are agreed between the pub-owning business and the tied pub tenant.
- (6) The pub-owning business must ensure that the Schedule of Condition is updated and reviewed—
- (a) in accordance with the terms of the tenancy or licence; or
 - (b) where the tenancy or licence does not require such a review—
 - (i) following any significant alteration to the structure of the premises; and
 - (ii) at least 6 months before the end of the tenancy or licence.
- (7) A survey of the premises which is carried out by a pub-owning business for the purposes of determining the dilapidations to the premises must be carried out—
- (a) in accordance with the terms of the tenancy or licence; and
 - (b) at least 6 months before the end of the tenancy or licence.
- (8) Paragraph (9) applies where a pub-owning business, or a person acting on its behalf, proposes to enter a tied pub for the purposes of —
- (a) assessing repairs or maintenance required under the tenancy or licence;
 - (b) carrying out such repairs or maintenance; or
 - (c) assessing dilapidations in respect of the premises.
- (9) The pub-owning business, or the person acting on its behalf, must not, except in an emergency, enter the pub without giving the tied pub tenant reasonable notice.

Short agreements

- 14.**—(1) Before entering into a short agreement, the pub-owning business must provide the following information to the tied pub tenant—
- (a) the amount of rent, or money payable in lieu of rent, which is to be paid under the short agreement;
 - (b) the information specified in paragraphs 12 to 17, 19, 20, 28, 32 and 34 of Schedule 1;
 - (c) the arrangements for the payment of utility bills.
- (2) The pub-owning business must advise the tenant to complete pubs entry training before entering into a short agreement unless the tenant meets at least one of the conditions in paragraph (3).
- (3) The conditions are—
- (a) that, on the day on which the short agreement is proposed, the tied pub tenant operates at least one other tied pub other than a tied pub occupied under a short agreement;
 - (b) that the tied pub tenant can demonstrate that the tenant has at least 3 years of relevant business management experience;
 - (c) that the pub-owning business has, at any time, granted the tenant a tenancy or licence in relation to a tied pub, other than a tenancy or licence in connection with another short agreement.

PART 3

Duties of pub-owning businesses in their dealings with their tied pub tenants: rent proposals

Duty to provide a rent proposal

15.—(1) Where any of paragraphs (2) to (7) apply, the pub-owning business must provide a rent proposal to the tied pub tenant.

- (2) This paragraph applies where—
- (a) the tenant receives a notice from the pub-owning business under section 25(1)(a) of the Landlord and Tenant Act 1954;
 - (b) the tenant requests a rent proposal within the period of 21 days beginning with the day on which the notice is received; and
 - (c) the pub-owning business has not—
 - (i) within the time ordinarily allowed, opposed under section 24(1)(b) of the Landlord and Tenant Act 1954, the tenant's application for a new tenancy; and
 - (ii) within the time ordinarily allowed, applied to the court, under section 29(2)(c) of that Act, for an order for the termination of the tenancy.
- (3) This paragraph applies where—
- (a) the tenant receives a notice from the pub-owning business under section 25(1) of the Landlord and Tenant Act 1954;
 - (b) the tenant requests a rent proposal within the period of 21 days beginning with the day on which the notice is received; and
 - (c) the pub-owning business—
 - (i) opposes the tenant's application under section 24(1) of that Act for a new tenancy; or
 - (ii) applies to the court, under section 29(2) of that Act, for an order for the termination of the tenancy.
- (4) This paragraph applies where—
- (a) the tenant makes a request for a new tenancy under section 26(d) of the Landlord and Tenant Act 1954;
 - (b) the tenant requests a rent proposal within the period of 21 days beginning with the day on which the request for a new tenancy is made; and
 - (c) the pub-owning business has not—
 - (i) within the time ordinarily allowed, opposed the tenant's application for a new tenancy under section 24(1) of that Act; and
 - (ii) within the time ordinarily allowed, applied to the court, under section 29(2) of that Act.
- (5) This paragraph applies where—
- (a) the tenant makes a request for a new tenancy under section 26 of the Landlord and Tenant Act 1954;
 - (b) the tenant requests a rent proposal within the period of 21 days beginning with the day on which the request for a new tenancy is made; and
 - (c) the pub-owning business —

(a) Section 25(1) was amended by S.I. 2003/3096.

(b) Section 24(1) was amended by section 3(2) of the Law of Property Act 1969 and by S.I. 2003/3096.

(c) Section 29(2) was substituted by S.I. 2003/3096.

(d) Section 26 was amended by S.I. 2003/3096.

- (i) opposes, under section 24(1) of that Act, the tenant's application for a new tenancy under section 26 of the Landlord and Tenant Act 1954; or
 - (ii) applies to the court under section 29(2) of that Act.
- (6) This paragraph applies where—
- (a) there is a change in the amount of rent or money payable in lieu of rent payable by the tenant under the tenancy or licence except where the change is due to an annual or other periodic indexation of rent which was agreed by the tenant when the tenancy or licence was entered into; and
 - (b) the tenant requests a rent proposal within the period of 21 days beginning with the day on which the change is notified to the tenant.
- (7) This paragraph applies where the pub-owning business notifies the tenant of a proposal to negotiate a new agreement with the tenant.
- (8) A pub-owning business is not required to provide a rent proposal where—
- (a) the event in paragraph (6) occurs; and
 - (b) regulation 19(1) applies in connection with the initial or revised rent.

Contents of the rent proposal

- 16.—(1) A rent proposal provided under regulation 15 must contain—
- (a) a proposal for, or information about the change in, the rent, or money payable in lieu of rent, which is to be paid under the tenancy or licence (“the initial or revised rent”);
 - (b) where a new tenancy or licence is proposed, any other terms of the tenancy or licence being proposed;
 - (c) the information specified in Schedule 2; and
 - (d) any other information which—
 - (i) the tenant requires to understand or negotiate the initial or revised rent in an informed manner; and
 - (ii) the pub-owning business would reasonably be expected to give to the tenant.
- (2) A pub-owning business is not required to comply with paragraph (1)(c) in respect of any information in Schedule 2—
- (a) which—
 - (i) has already been provided to a tied pub tenant in connection with the tenancy or licence; and
 - (ii) has not changed materially since it was provided; or
 - (b) which is not reasonably available to the pub-owning business.
- (3) The pub-owning business must prepare the rent proposal in accordance with the RICS guidance, and the rent proposal, when provided, must be accompanied by written confirmation, from a member or fellow of the RICS, that the proposal has been so prepared.

When the rent proposal must be provided

17. A rent proposal provided under regulation 15 must be provided—
- (a) where regulation 15(2) applies, within the period of 21 days beginning with the day on which the tenant requests the proposal;
 - (b) where regulation 15(3) applies, within the period of 21 days beginning with the day on which the court makes an order for the grant of a new tenancy;
 - (c) where regulation 15(4) applies, within the period of 2 months beginning with the day on which the tenant makes the request for a new tenancy under section 26 of the Landlord and Tenant Act 1954;

- (d) where regulation 15(5) applies, within the period of 21 days beginning with the day on which the court makes an order for the grant of a new tenancy;
- (e) where regulation 15(6) applies, within the period of 21 days beginning with the day on which the request is made;
- (f) where regulation 15(7) applies, before the tenant considers the advice referred to in regulation 10(2)(a).

Further information and advice in relation to the rent proposal

18.—(1) The pub-owning business must—

- (a) comply with any reasonable request which is made by the tied pub tenant, or a person acting on behalf of the tenant, for information which—
 - (i) is relevant to the negotiation of the initial or revised rent; or
 - (ii) may help the tenant to understand that rent, or
- (b) provide to the tied pub tenant, within the period of 7 days beginning with day on which the request was received, a reasonable explanation why the information requested is not provided.

(2) The pub-owning business must advise the tied pub tenant to obtain independent professional advice in connection with the initial or revised rent before the tenant agrees that rent.

PART 4

Duties of pub-owning businesses in their dealings with their tied pub tenants: rent assessments

Duty to conduct a rent assessment or an assessment of money payable in lieu of rent

19.—(1) A pub-owning business—

- (a) must conduct a rent assessment or an assessment of money payable in lieu of rent in connection with a rent review which is required under the terms of a tenancy or licence of a tied pub of which it is the landlord; and
- (b) must conduct a rent assessment or an assessment of money payable in lieu of rent where a tied pub tenant of such a pub requests it under paragraph (2).

(2) A tied pub tenant may request a rent assessment or an assessment of money payable in lieu of rent if —

- (a) such an assessment has not ended within the period of 5 years ending with the date of the request;
- (b) there is a significant increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant; or
- (c) the tied pub tenant demonstrates that a trigger event has occurred by means of a written analysis of the level of trading which is forecast for a period of 12 months or more beginning with the day on which the tenant makes the request.

(3) A request under paragraph (2) must be made in writing and—

- (a) in the case of a request made under paragraph (2)(b), must be received by the pub-owning business within the period of 14 days beginning with the day on which the tied pub tenant receives notification of the significant increase; and
- (b) in the case of a request made under paragraph (2)(c), must be received by the pub-owning business within the period of 14 days beginning with the day on which the tied pub tenant sends the written analysis referred to in that paragraph to the pub-owning business.

(4) The following are not rent reviews for the purposes of paragraph (1)(a)—

- (a) an annual or other periodic indexation of rent;
- (b) a change in rent in connection with the receipt of a corresponding benefit from the pub-owning business;
- (c) a change in rent in connection with the freeing of the tied pub tenant from a product or service tie;
- (d) any discussions in respect of changes in rent which are carried out within a review of the business provided for under the terms of the tenancy or licence.

The rent assessment proposal

20.—(1) Where a pub-owning business is required to conduct a rent assessment or an assessment of money payable in lieu of rent under regulation 19(1), the pub-owning business must send the tied pub tenant a document (“the rent assessment proposal”) containing—

- (a) a proposal for the rent or money payable in lieu of rent which is to be paid under the tenancy or licence at the end of the assessment (the “new rent”);
- (b) the information specified in Schedule 2, if it is reasonably available to the pub-owning business;
- (c) such other information as may be required to ensure that the tenant is able to negotiate, in an informed manner, the new rent.

(2) The rent assessment proposal must be provided to the tied pub tenant—

- (a) in the case of an assessment conducted under regulation 19(1)(a), at least 6 months before the rent review date;
- (b) in the case of an assessment conducted under regulation 19(1)(b), within the period of 21 days beginning with the day on which the tied pub tenant requests the assessment.

(3) The pub-owning business must prepare the rent assessment proposal in accordance with the RICS guidance and the rent assessment proposal, when provided, must be accompanied by written confirmation from a member or fellow of the RICS that the rent assessment proposal has been so prepared.

Conduct of the rent assessment or the assessment of money payable in lieu of rent

21.—(1) For the purposes of these Regulations, a rent assessment or an assessment of money payable in lieu of rent begins on the day on which a pub-owning business provides a rent assessment proposal to the tied pub tenant in accordance with regulation 20.

(2) A rent assessment or an assessment of money payable in lieu of rent must be conducted in accordance with the RICS guidance.

(3) During the rent assessment or assessment of money payable in lieu of rent, the pub-owning business must—

- (a) comply with any reasonable request for further information which is relevant for the negotiation of the new rent and which is made by the tied pub tenant or by a person acting on behalf of the tied pub tenant; or
- (b) provide to the tied pub tenant, as soon as reasonably practicable, a reasonable explanation why the information requested is not provided.

(4) Where a pub-owning business is required to conduct an assessment under regulation 19(1)(a), it must ensure that a person who is involved in the preparation of the rent assessment proposal on its behalf visits the tied pub within the period of 3 months ending on the day on which the rent assessment proposal is provided to the tied pub tenant for the purpose of gathering information about the location and layout of the pub.

(5) The pub-owning business must advise the tied pub tenant to obtain independent professional advice in connection with the new rent before the tenant agrees that rent.

(6) Paragraph (7) applies at the end of the assessment where—

- (a) the rent, or money payable in lieu of rent, payable under the tenancy or licence is adjusted as a result of the assessment; and
 - (b) either—
 - (i) the rent review date has passed; or
 - (ii) more than 6 months have elapsed since the day on which the rent assessment proposal was provided to the tied pub tenant.
- (7) Before the new rent is agreed by the tied pub tenant, the tied pub tenant and the pub-owning business must agree, in writing—
- (a) that, where the recoverable rent is a positive amount, it is to be paid by the pub-owning business to the tied pub tenant;
 - (b) that, where the recoverable rent is a negative amount, it is to be paid by the tied pub tenant to the pub-owning business, and
 - (c) arrangements for making any payment under sub-paragraph (a) or (b).
- (8) The tied pub tenant’s agreement to the new rent must be given in writing.
- (9) A member or fellow of the RICS must confirm that the rent assessment or the assessment of money payable in lieu of rent has been conducted in accordance with guidance issued by that institution.
- (10) The “recoverable rent” means—
- (a) the amount of the rent, or money payable in lieu of rent, which is payable as a result of regulation 22(1)(a) in respect of the rent recovery period; less
 - (b) the amount of the rent, or money payable in lieu of rent, which would have been payable in respect of that period if (instead of the rent or money payable in lieu of rent mentioned in sub-paragraph (a)) the new rent had been payable in respect of that period.
- (11) The “rent recovery period” is the period which—
- (a) begins—
 - (i) in the case of an assessment conducted under regulation 19(1)(a), with the rent review date;
 - (ii) in the case of an assessment conducted under regulation 19(1)(b), with the day after the period of 6 months beginning with the day on which the rent assessment proposal was provided to the tied pub tenant; and
 - (b) ends with the day on which the assessment ends.
- (12) In these Regulations, the “rent review date” is the date from which the terms of the tenancy or licence require the rent, or money payable in lieu of rent, to be payable following a rent review.

Effect of the rent assessment or the assessment of money payable in lieu of rent

- 22.—**(1) Where a pub-owning business conducts an assessment under regulation 19(1)—
- (a) the rent, or money payable in lieu of rent, which is payable under the tenancy or licence at the beginning of the assessment remains payable until the end of the assessment; and
 - (b) the new rent is payable with effect from the day after the end of that assessment.
- (2) For the purposes of these Regulations, a rent assessment or an assessment of money payable in lieu of rent ends—
- (a) in the case of an assessment which is conducted under regulation 19(1)(a)—
 - (i) on the rent review date;
 - (ii) if later, on the date on which the tied pub tenant and the pub-owning business agree the new rent in writing;
 - (b) in the case of an assessment which is conducted under regulation 19(1)(b)—
 - (i) at the end of the period of 6 months beginning with the day on which the rent assessment proposal was provided to the tied pub tenant; or

- (ii) if later, on the date on which the tied pub tenant and the pub-owning business agree the new rent in writing.

(3) But where—

- (a) the tied pub tenant gives an MRO notice; and
- (b) before the assessment is agreed, the tied pub tenant and the pub-owning business enter into a tenancy or licence,

the assessment ends on the day on which the tenancy or licence is entered into.

PART 5

Market rent only option: MRO notice

The MRO notice

23.—(1) A tied pub tenant may give a notice (an “MRO notice”) to the pub-owning business where—

- (a) the event specified in regulation 24 or 25 occurs; or
- (b) the event specified in regulation 26 or 27 occurs and the investment exception does not apply (see regulation 56).

(2) The MRO notice must be—

- (a) in writing; and
- (b) received by the pub-owning business within the period of 21 days beginning with the day on which the event mentioned in paragraph (1) occurred.

(3) The MRO notice must include—

- (a) the tenant’s name, postal address, email address (if any) and telephone number;
- (b) the date on which the notice is being sent;
- (c) the name of the tied pub in relation to which the request for an offer of a market rent only option is being made and its address;
- (d) the date on which the event mentioned in paragraph (1) occurred; and
- (e) a description of that event which, in the tenant’s opinion, demonstrates that it is an event specified in regulation 24, 25, 26 or 27.

(4) A tied pub tenant may not give an MRO notice to the pub-owning business where—

- (a) the tenant has already given an MRO notice under paragraph (1); and
- (b) the MRO procedure^(a) which relates to that notice has not ended.

A significant increase in the price of a product or service

24. The event specified in this regulation is that the tied pub tenant receives notification of a significant increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant.

A trigger event

25.—(1) The event specified in this regulation is that the tied pub tenant sends the pub-owning business, during the relevant period, a relevant analysis which demonstrates that a trigger event has occurred.

(2) In paragraph (1)—

(a) Section 44(1)(a) of SBEEA 2015 defines “MRO procedure”.

- (a) “the relevant period” means the period of 56 days beginning with the day after that on which the trigger event occurred;
- (b) “a relevant analysis” means a written analysis of the level of trading which is forecast for a period beginning with the day on which the trigger event occurred and ending at least 12 months later.

The renewal of a pub arrangement

26.—(1) The event specified in this regulation is that a pub arrangement is renewed.

(2) For the purposes of section 43(6) of SBEEA 2015 (and so of this regulation), a protected 1954 Act tenancy is renewed between the tied pub tenant and the pub-owning business—

- (a) on the day on which the tied pub tenant receives the pub-owning business’s notice under section 25(1) of the Landlord and Tenant Act 1954; or
- (b) on the day on which the landlord receives the tied pub tenant’s request under section 26 of that Act.

(3) For the purposes of section 43(6) of SBEEA 2015 (and so of this regulation), a tenancy which is not a protected 1954 Act tenancy is renewed between the tied pub tenant and the pub-owning business on the first day on which the tenancy may be renewed under the terms of the tenancy.

A rent assessment or an assessment of money payable in lieu of rent

27. The event specified in this regulation is that the tied pub tenant receives a rent assessment proposal sent by the pub-owning business under regulation 20(1) in respect of the tenancy or licence.

PART 6

Market rent only option: procedure to be followed in connection with an offer

Arrangements during the MRO procedure: rent etc

28.—(1) Where a tied-pub tenant gives an MRO notice, the pub-owning business must not—

- (a) exercise any right to recover any rent, or money payable in lieu of rent, which subsequently becomes payable under the tenancy or licence if and to the extent that it is payable at a higher rate than was payable when the notice was given; or
- (b) exercise any right to—
 - (i) make subject to a product or service tie any product or service that was not subject to such a tie at when the notice was given, or
 - (ii) disapply a product or service tie from a product or service that was subject to such a tie when the notice was given.

(2) Paragraph (1) does not apply where—

- (a) the MRO notice states that the event specified in regulation 26 has occurred; and
- (b) the tied pub is occupied under a protected 1954 Act tenancy.

(3) Paragraph (1) ceases to apply at the end of the MRO procedure if the tied pub tenant and the pub-owning business have not by then agreed a market rent only option.

Effect of tenant’s notice

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

(2) The pub-owning business must send a written acknowledgement to the tied pub tenant as soon as reasonably practicable.

(3) Where the pub-owning business agrees with the tied pub tenant’s opinion under regulation 23(3)(e), the pub-owning business must send the tenant—

- (a) a statement confirming its agreement;
- (b) where the MRO notice relates to a tenancy, a proposed tenancy which is MRO-compliant;
- (c) where the MRO notice relates to a licence, a proposed licence which is MRO-compliant.

(4) Where the pub-owning business disagrees with the tied pub tenant’s opinion under regulation 23(3)(e), it must send the tenant—

- (a) a statement confirming its disagreement; and
- (b) its reasons for disagreeing.

(5) A response under paragraph (3) or (4) is a “full response”.

(6) The pub-owning business must send a full response within the period of response.

(7) The “period of response” is, subject to paragraphs (8) and (9), the period of 28 days which begins with the day on which the pub-owning business receives an MRO notice.

(8) Where—

- (a) the tenant gives an MRO notice that the event specified in regulation 26 has occurred;
- (b) the event is a renewal by virtue of regulation 26(2)(a); and
- (c) the pub-owning business—
 - (i) opposes the tenant’s application for a new tenancy under section 24(1) of the Landlord and Tenant Act 1954; or
 - (ii) applies to the court under section 29(2) of that Act, for an order for the termination of the tenancy,

the “period of response” is the period of 28 days which begins with the day on which the court makes an order for the grant of a new tenancy.

(9) Where the tenant gives an MRO notice that the event specified in regulation 26 has occurred, and the event is a renewal by virtue of regulation 26(2)(b), the “period of response” is the period of 28 days which begins —

- (a) at the end of the period of two months after the day on which the tenant makes a request for a new tenancy under section 26 of the Landlord and Tenant Act 1954; or
- (b) where the pub-owning business opposes the tenant’s application for a new tenancy under section 24(1) of that Act, or applies to the court under section 29(2) of that Act, on the day on which the court makes an order for the grant of a new tenancy.

Terms and conditions required in proposed MRO tenancy

30.—(1) Paragraph (2) applies where—

- (a) a tied pub tenant is subject to a tenancy (“the existing tenancy”) granted by the pub-owning business;
- (b) the tied pub tenant gives an MRO notice to the pub-owning business; and
- (c) the pub-owning business sends a proposed tenancy (“the proposed MRO tenancy”) to the tied pub tenant as part of a full response under regulation 29(3) or a revised response under regulation 33(2) or otherwise during the negotiation period(a).

(2) Where the MRO notice states that the event specified in regulation 24, 25 or 27 has occurred, the proposed MRO tenancy is MRO-compliant only if it contains provision the effect of which is that its term is for a period that is at least as long as the remaining term of the existing tenancy.

(a) Section 44(2)(b) of SBEEA 2015 defines “negotiation period”.

Terms and conditions regarded as unreasonable in relation to proposed MRO tenancy etc

31.—(1) Paragraph (2) applies where—

- (a) a tied pub tenant is subject to a tenancy (“the existing tenancy”) granted by the pub-owning business;
- (b) the tied pub tenant gives an MRO notice to the pub-owning business; and
- (c) the pub-owning business sends a proposed tenancy (“the proposed MRO tenancy”) to the tied pub tenant as part of a full response under regulation 29(3) or a revised response under regulation 33(2) or otherwise during the negotiation period.

(2) The terms and conditions of the proposed MRO tenancy, taken together with any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the tenancy, are to be regarded as unreasonable for the purposes of section 43(4) of SBEEA 2015 if they—

- (a) include a break clause in relation to the MRO tenancy which is exercisable only by the pub-owning business;
- (b) impose a service tie in respect of insurance other than buildings insurance in connection with the premises to which the proposed MRO tenancy relates; or
- (c) are terms which are not common terms in agreements between landlords and pub tenants who are not subject to product or service ties.

(3) Paragraph (4) applies where—

- (a) the conditions in paragraph (1)(a) to (c) are met, and
- (b) the existing tenancy is a protected 1954 Act tenancy.

(4) The terms and conditions of the proposed MRO tenancy, taken together with any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the tenancy, are to be regarded as unreasonable for the purposes of section 43(4) of SBEEA 2015 if they exclude the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954 in relation to the proposed MRO tenancy.

(5) Paragraph (6) applies where—

- (a) a tied pub tenant is subject to a licence granted by the pub-owning business;
- (b) the tied pub tenant gives an MRO notice to the pub-owning business; and
- (c) the pub-owning business sends a proposed licence (“the proposed MRO licence”) to the tied pub tenant as part of a full response under regulation 29(3) or a revised response under regulation 33(2) or otherwise during the negotiation period.

(6) The terms and conditions of the proposed MRO licence, taken together with any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the licence, are to be regarded as unreasonable for the purposes of section 43(4) of SBEEA 2015 if they impose a service tie in respect of insurance other than buildings insurance in connection with the premises to which the licence relates.

Failure to acknowledge the tenant’s notice, provide a full response etc.

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

(2) 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 other requirements of regulation 29; or
- (c) the tied pub tenant disagrees with the pub-owning business’s statement under regulation 29(4)(a),

the tenant or the pub-owning business may refer the matter to the Adjudicator^(a).

(3) Where the tied pub tenant or the pub-owning business intends to make a referral under paragraph (2), the tenant and the pub-owning business must notify each other, in writing, of their intention to do so before the referral is made.

(4) A referral under paragraph (2) must be made within the period of 14 days beginning with the day after the end of the period of response.

MRO procedure where a matter is referred to the Adjudicator in connection with the full response

33.—(1) Where—

- (a) a matter is referred to the Adjudicator under regulation 32(2)(b) or (c); 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 ruling.

(2) Where—

- (a) a matter is referred to the Adjudicator under regulation 32(2)(a) to (c); and
- (b) the Adjudicator 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 of the Adjudicator’s ruling or by such a day as may be specified in the Adjudicator’s ruling.

(3) A “revised response” is a response which includes the information mentioned in regulation 29(3)(a) to (c).

The negotiation period

34.—(1) This regulation applies where—

- (a) the pub-owning business has provided the tenant with a full response under regulation 29(3) or a revised response under regulation 33(2); and
- (b) the tied pub tenant continues to wish to pursue a market rent only option.

(2) The tied pub tenant and the pub-owning business must, until the end of the MRO procedure, seek to agree a tenancy or licence that is MRO-compliant.

(3) Where—

- (a) the pub-owning business proposes a tenancy or licence to the tied pub tenant during the negotiation period;
- (b) the tied pub tenant does not, during that period, communicate to the pub-owning business, in writing, a decision to accept or reject the proposal;
- (c) the tenant does not make a reference under regulation 35 in relation to the proposed tenancy or licence; and
- (d) the time allowed under that regulation for making such a reference has expired,

the proposal lapses on the day after that on which the time so allowed expires.

(4) The negotiation period is the period of 56 days beginning with the day on which the tied pub tenant receives—

- (a) a full response under regulation 29(3); or
- (b) if later, a revised response under regulation 33(2).

(a) Section 72(1) of SBEEA 2015 defines “the Adjudicator”.

Failure to agree: right to refer to the Adjudicator or independent assessor

35.—(1) Where—

- (a) the pub-owning business sends a subsequent proposed tenancy or licence to the tied pub tenant during the negotiation period; and
- (b) the tenant considers that the tenancy or licence is not MRO-compliant,

the tenant may refer the matter to the Adjudicator within the period of 14 days beginning with the day after the day on which the subsequent proposed tenancy is received.

(2) A “subsequent proposed tenancy or licence” means a tenancy or licence which the pub-owning business has proposed to the tied pub tenant during the negotiation period.

(3) Where the pub-owning business sends a proposed tenancy or licence to the tied pub tenant (whether as part of a full response under regulation 29(3) or a revised response under regulation 33(2) or otherwise during the negotiation period) the tied pub tenant may refer the proposed MRO rent to an independent assessor^(a) by sending a notice to the pub-owning business, in writing, of the tenant’s intention to do so within the period—

- (a) beginning with the day 28 days after the day on which the negotiation period begins; and
- (b) ending with the day 7 days after the day on which that period ends.

(4) Where the tied pub tenant refers a matter to the Adjudicator under paragraph (1), no reference to an independent assessor may be made under paragraph (3) in relation to the same tenancy or licence until the matter has been determined.

(5) Where the tied pub tenant refers the proposed MRO rent under a tenancy or licence to an independent assessor under paragraph (3), no reference may subsequently be made under paragraph (1) in relation to the same tenancy or licence.

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

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^(b).

(a) Section 72(1) of SBEEA 2015 defines “independent assessor”.

(b) Section 43(10) of SBEEA 2015 defines “market rent”.

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—

- (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.

PART 8

End of the MRO procedure

End of the MRO procedure

39.—(1) This regulation applies where a tied pub tenant has given an MRO notice.

(2) Where 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 (including where the tenant accepts a tenancy or licence under regulation 37(13), 38(5), 59(2), (5) or (9)), the tenant and the pub-owning business must, as soon as reasonably practicable, enter into the tenancy or licence.

(3) Where the tied pub tenant and the pub-owning business fail to enter into a tenancy or licence in compliance with paragraph (2), either of them may refer the matter to the Adjudicator.

(4) The MRO procedure ends on the earliest of the following days—

- (a) where the tied pub tenant and the pub-owning business enter into a tenancy or licence, on the day on which the tenancy or licence is entered into;
- (b) where the tenancy or licence under which the tied pub is occupied at the time the MRO notice is given ends, on the day on which the tenancy or licence ends;
- (c) where—
 - (i) the negotiation period ends;
 - (ii) the tied pub tenant does not, 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 a tenancy or licence proposed by the pub-owning business during that period; and
 - (iv) the time allowed under that regulation for making such a reference has expired, on the day on which the negotiation period ends or, if later, on the day after that on which time expires as mentioned in paragraph (iv);
- (d) where the tied pub tenant rejects a proposed tenancy or licence under regulation 37(13) or (14), 38(5) or (6), or 59(2), (5), (9) or (10), on the day on which the tenant rejects that proposal;
- (e) where—
 - (i) a matter is referred to the Adjudicator under regulation 32(2); and
 - (ii) the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) does not consider that the circumstances are such that the pub-owning business must offer the tenant a market rent only option, on the day of the Adjudicator's ruling;
- (f) where—
 - (i) a matter is referred in connection with any other aspect of the MRO procedure; and
 - (ii) the Adjudicator rules that the MRO procedure ends on a specified day, on the day so specified;
- (g) where the pub-owning business conducts a rent assessment or an assessment of money payable in lieu of rent, on the day on which the tenant agrees, in writing, the new rent.

Disputes about rent etc payable during MRO procedure

40. Where the tied pub tenant and the pub-owning business disagree as to whether an amount has become recoverable by the pub-owning business at the end of the MRO procedure as a result of regulation 28(3), either of them may refer the matter to the Adjudicator.

PART 9

Business development managers and compliance officers

Business development managers

41.—(1) The pub-owning business must ensure that each of its business development managers—

- (a) receives a copy of these Regulations before the business development manager liaises with tied pub tenants over any matters relating to the Regulations;
- (b) is provided with appropriate training in relation to the requirements of these Regulations at least once every 12 months; and
- (c) deals with tied pub tenants in a manner that is consistent with the principle referred to in section 42(3)(a) of SBEEA 2015.

(2) A pub-owning business must provide to its tied pub tenants information about—

- (a) the role of the business development manager; and
- (b) the support and guidance which the business development manager will provide to the tenants.

(3) Where a business development manager is responsible for conducting rent assessments or assessments of money payable in lieu of rent, the pub-owning business must ensure that the business development manager receives appropriate training before conducting any such assessment.

(4) A pub-owning business must ensure that the business development manager—

- (a) makes appropriate notes of any discussions with tied pub tenants in connection with—
 - (i) rent proposals;
 - (ii) rent assessments or assessments of money payable in lieu of rent;
 - (iii) repairs to the tied pub premises;
 - (iv) matters relating to the tied pub tenants' current or future business plans;
- (b) provides tied pub tenants with a record of any such discussions within the period of 14 days beginning with the day on which the discussion occurred; and
- (c) requests that the tenant respond to the business development manager if the tenant does not agree with any aspect of the record within the period of 7 days beginning with the day on which the record was received.

(5) A pub-owning business must specify, in a document published by the pub-owning business—

- (a) its commitment towards the continuous professional development and improvement of its business development managers; and
- (b) how it proposes to fulfil such a commitment, referring where appropriate to relevant qualifications and training.

(6) A “business development manager” means—

- (a) a person who is employed as such by a pub-owning business; or
- (b) any other person who represents the pub-owning business in negotiations with tied pub tenants in connection with the matters listed in paragraph (4)(a).

Duty to appoint a compliance officer

42.—(1) A pub-owning business must appoint a suitably qualified employee to be the compliance officer, whose role is to verify the pub-owning business's compliance with these Regulations.

(2) The pub-owning business must ensure that the compliance officer—

- (a) is provided with the resources necessary to carry out his or her role, including information relating to the pub-owning business's obligations under these Regulations;
- (b) is entitled to contact the business development managers to discuss matters relating to those obligations;
- (c) makes himself or herself reasonably available to tied pub tenants and any other persons acting on their behalf who may have a query relating to these Regulations;
- (d) is independent of, and is not managed by, the business development managers;
- (e) is entitled to discuss with tied pub tenants the reasons for any decisions made by the pub-owning business under these Regulations;
- (f) is entitled to discuss with the Adjudicator matters relating to the pub-owning business's compliance with these Regulations;
- (g) for the purposes of the annual compliance report, maintains records of the training received by the business development managers.

Annual compliance report

43.—(1) A pub-owning business must ensure that the compliance officer submits an annual compliance report to the Adjudicator relating to each financial year^(a).

(2) The annual compliance report must be submitted to the Adjudicator within the period of 4 months beginning with the day after the end of the financial year to which the report relates.

(3) Paragraph (4) applies in relation to a person who, immediately before these Regulations come into force, is the landlord of 500 or more tied pubs.

(4) The person must ensure that the first annual compliance report required under paragraph (1) relates to the period—

- (a) beginning with the day on which these Regulations come into force; and
- (b) ending on the last day of the first subsequent full financial year.

(5) Before the annual compliance report is submitted to the Adjudicator under paragraph (2), the report must be approved—

- (a) by the Chair of the Audit Committee; or
- (b) if the pub-owning business does not have an Audit Committee, by the non-executive director of the pub-owning business responsible for carrying out the functions normally associated with an Audit Committee, or, in the absence of any such non-executive director, by the pub-owning business's Chief Executive Officer, Managing Director or equivalent.

(6) The annual compliance report must include a detailed and accurate account of —

- (a) the pub-owning business's compliance with these Regulations in the period to which the report relates;
- (b) any instances where a breach or alleged breach of these Regulations has been identified by a tied pub tenant;
- (c) the steps taken in relation to any such breach, or alleged breach; and
- (d) any steps taken during the period to which the report relates to ensure compliance with these Regulations, including details of training and guidance offered to employees in connection with the Regulations.

(7) The pub-owning business must ensure—

- (a) that the compliance officer provides such other reports as are necessary to ensure that the pub-owning business's Audit Committee has an understanding of the pub-owning business's compliance with these Regulations; or

^(a) Section 72(1) of SBEEA 2015 defines "financial year".

- (b) that, if the pub-owning business does not have an Audit Committee, the compliance officer reports directly to the non-executive director of the pub-owning business responsible for carrying out the functions normally associated with an Audit Committee, or, in the absence of any such non-executive director, to the pub-owning business's Chief Executive Officer, Managing Director or equivalent.

(8) A summary of the annual compliance report must be included in the pub-owning business's annual report.

(9) If the pub-owning business does not produce an annual report, the summary of the annual compliance report must be published clearly and prominently on the pub-owning business website (if any) within the period of 4 months beginning with the day after the end of the financial year to which the report relates.

Provisions of these Regulations which are not arbitrable

44. For the purposes of section 48 of SBEEA 2015 (referral for arbitration by tied pub tenants) the following provisions are not arbitrable—

- (a) regulation 41(1)(b), (3) and (5);
- (b) regulation 42;
- (c) regulation 43.

PART 10

Miscellaneous

Pub-owning business to notify Adjudicator and tied pub tenants of status under these Regulations

45.—(1) A person who, immediately before the commencement date, is the landlord of 500 or more tied pubs, must notify that fact to—

- (a) the Adjudicator; and
- (b) its tied pub tenants,

as soon as reasonably practicable after the commencement date.

(2) A person who, at any time on or after the commencement date, becomes the landlord of 500 or more tied pubs must, as soon as reasonably practicable after that date, notify the Adjudicator and its tied pub tenants, of that fact.

(3) A person who—

- (a) gives notice under paragraph (1) or (2); and
- (b) subsequently ceases to be the landlord of 500 or more tied pubs,

must, as soon as reasonably practicable, notify the Adjudicator and its tied pub tenants, of that fact.

Insurance

46.—(1) Paragraphs (2) to (4) apply where a pub-owning business intends to charge a tied pub tenant an amount (“the insurance charge”) in respect of premiums for insurance in respect of the premises to which the tenancy or licence relates.

(2) The pub-owning business must inform the tied pub tenant whether—

- (a) the insurance charge exceeds the amount payable by the pub-owning business in respect of premiums for insurance in respect of the premises under the insurance policy and, if so, the amount of that excess; and

- (b) the pub-owning business, or any group undertaking^(a) in relation to the pub-owning business, receives, or expects to receive, any commission or rebate in connection with that policy.

(3) Before the pub-owning business purchases, or renews, an insurance policy in respect of the premises, the pub-owning business must—

- (a) provide to the tenant full details of that policy, including the cover which is provided, the charges payable and any contributions towards a claim which the tenant is required to make;
- (b) provide to the tenant any additional information required to allow the tenant to compare the policy with other suitable, comparable policies which may be available; and
- (c) where the tied pub tenant notifies the pub-owning business that it has identified a suitable and comparable alternative policy (the “tenant’s alternative policy”), consider that policy.

(4) Where the pub-owning business is required to provide information under paragraph (3), the pub-owning business must do so—

- (a) at least 21 days before the day on which the policy has effect; or
- (b) if earlier, at least 21 days before the day on which the pub-owning business enters into the insurance.

(5) Paragraph (6) applies where the insurance charge is higher than the amount which it would be if the pub-owning business entered into the tenant’s alternative policy (the “alternative insurance charge”).

(6) The pub-owning business must—

- (a) purchase the tenant’s alternative policy; or
- (b) agree, in writing, that any difference between the insurance charge and the alternative insurance charge is not payable by the tenant.

Gaming machines

47. A pub-owning business—

- (a) must not enter into a new tenancy or licence; and
- (b) must not renew a tenancy or a licence,

which requires a tied pub tenant to purchase or rent gaming machines.

Blank template for profit and loss account

48. Where the tied pub tenant so requests, the pub-owning business must provide to the tenant a blank template for completing the tied pub’s profit and loss account.

Sale of freehold or long leasehold

49.—(1) Where the pub-owning business is aware that the holder of the freehold, or the superior landlord, of the premises to which the tenancy or licence relates has—

- (a) taken any steps to advertise the sale of the freehold or the leasehold;
- (b) placed the freehold or the leasehold on the market;
- (c) employed an agent to sell the freehold or the leasehold; or
- (d) entered into an agreement to sell the freehold or the leasehold,

the pub-owning business must comply with paragraph (2) as soon as reasonably practicable.

(2) The pub-owning business must provide to the tied pub tenant—

(a) Section 72(1) of SBEEA 2015 defines “group undertaking”.

- (a) details of any arrangements which have been made of the kind mentioned in paragraph (1)(a) to (c); and
 - (b) where an agreement of the kind mentioned in paragraph (1)(d) has been entered into, the name and address of the buyers.
- (3) The pub-owning business is not required to provide the information under paragraph (2)(a)—
- (a) if the sale is part of a sale and leaseback transaction; or
 - (b) if a disclosure under that paragraph would breach any obligation under or by virtue of any Act.

Tied pub tenant not to suffer detriment

50. A pub-owning business must not subject a tied pub tenant to any detriment on the ground that the tenant exercises, or attempts to exercise, any right under these Regulations.

Flow monitoring devices

51.—(1) A pub-owning business must not subject a tied pub tenant to any detriment, or impose any liabilities on the tenant, as a result of any reading taken from a flow monitoring device, without additional evidence in connection with the purchase and stock of alcohol at the tied pub.

(2) A “flow monitoring device” means a device which is at the tied pub at the direction of the pub-owning business—

- (a) to measure the amount of alcohol^(a) being sold by the tied pub tenant; and
- (b) for the purposes of verifying that the tenant does not sell alcohol at the tied pub in contravention of the terms of the tenancy or licence.

PART 11

Extended protection under these Regulations

Extended protection to last until the end of a tenancy

52. Where a protected 1954 Act tenancy is renewed, the tenancy ends, for the purposes of section 69(5)(a) of SBEEA 2015—

- (a) on the date on which the tenancy is renewed; or
- (b) if earlier, on the date on which the tenancy was due to expire before it was renewed.

Extended protection to last until a rent assessment is concluded

53. For the purposes of section 69(5)(b) of SBEEA 2015, a rent assessment or assessment of money payable in lieu of rent is concluded when the tenant and the landlord who is no longer a pub-owning business agree the new rent in writing under regulation 22(3).

(a) Section 68(9) of SBEEA 2015 defines “alcohol”.

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
- (d) confirmation that the tied pub tenant has had an opportunity to obtain alternative estimates for the works;
- (e) a term specifying the dates on which the investment period is to begin and end;
- (f) 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.

PART 13

Void or unenforceable terms

Void or unenforceable terms of a tenancy or licence

57.—(1) A term of a tenancy or other agreement between a tied pub tenant and a pub-owning business (whether entered into before or after the commencement date) is void if it purports to—

- (a) penalise the tenant for requiring the pub-owning business to act, or not act, in accordance with Parts 2 to 10 of these Regulations; or
- (b) provide that a rent review or a review of money payable by the tenant in lieu of rent in relation to the tied pub—
 - (i) may be initiated only by the pub-owning business; or
 - (ii) may only determine that the rent or money payable in lieu of rent is to be increased.

(2) A dispute in relation to a term which is unenforceable, in that it purports to exclude, limit or otherwise modify the processes or the obligations of pub-owning businesses required under Parts 2 to 10 of these Regulations, may be arbitrated in accordance with an arbitration agreement^(a).

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.

(a) Section 72(1) of SBEEA 2015 defines “arbitration agreement”.

(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^(a) 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.

(a) 1996 c.23.

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.

PART 15

Group undertakings

Adjudicator’s determination during referral of a dispute

62.—(1) This regulation applies where—

- (a) a tied pub tenant has referred a dispute between the tenant and a pub-owning business (“P”) to the Adjudicator under section 48 of SBEEA 2015; and
- (b) there is evidence before the Adjudicator which suggests that a group undertaking (“U”) in relation to the pub-owning business—
 - (i) discharges, has discharged, exercises or has exercised, influence over any of P’s obligations under the tenancy or licence to which the dispute relates; or
 - (ii) is responsible for, or exercises influence over, the terms of that tenancy or licence, the financial arrangements, the charging policies or any other administrative, managerial or executive decisions of P, which affect the tied pub tenant,in a way which is relevant to the dispute.

(2) Where this regulation applies, the Adjudicator may determine that U is to be treated as a pub-owning business, as well as or instead of P, for the purposes of the arbitration.

(3) Before the Adjudicator makes a determination under paragraph (2), the Adjudicator must consider representations from U.

(4) The Adjudicator may disregard a request from a tied pub tenant for U to be treated as a pub-owning business, where—

- (a) U is not identified by the tenant in such a way that the Adjudicator is able to establish U’s name, business address and its relationship with P;
- (b) the tied pub tenant has not notified U in writing of the dispute; or
- (c) the tenant has not forwarded a copy of the request to U.

Investigations by the Adjudicator

63.—(1) This regulation applies where—

- (a) the Adjudicator is conducting an investigation of a pub-owning business (“P”) under section 53 of SBEEA 2015; and
- (b) in the course of that investigation, evidence becomes available to the Adjudicator which suggests that a group undertaking in relation to P—
 - (i) discharges, has discharged, exercises, or has exercised, influence over any of P’s obligations under the tenancy or licence to which the investigation relates; or
 - (ii) is responsible for, or exercises influence over, that tenancy or licence, the financial arrangements, the charging policies or any other administrative, managerial or executive decisions of P, which affect the tied pub tenant,in a way which is relevant to the investigation.

(2) Where this regulation applies, the Adjudicator may determine that the group undertaking is to be treated as a pub-owning business, as well as, or instead of P, for the purposes of an investigation under sections 53 to 61 of SBEEA 2015.

Adjudicator's determination in relation to UK businesses only

64. The Adjudicator may not determine that a person who is a group undertaking in relation to a pub-owning business is to be treated as a pub-owning business unless the person—

- (a) carries on a trade or business in the United Kingdom; or
- (b) is a UK-registered company within the meaning of section 1158 of the Companies Act 2006(a).

PART 16

Transitional provisions

Rent proposals

65.—(1) A pub-owning business is not required to provide a rent proposal under regulation 15(1) by virtue of the application of regulation 15(2), unless the event mentioned in regulation 15(2)(a) occurs on or after the commencement date.

(2) A pub-owning business is not required to provide a rent proposal under regulation 15(1) by virtue of the application of regulation 15(3), unless the event mentioned in regulation 15(3)(a) occurs on or after the commencement date.

(3) A pub-owning business is not required to provide a rent proposal under regulation 15(1) by virtue of the application of regulation 15(4), unless the event mentioned in regulation 15(4)(a) occurs on or after the commencement date.

(4) A pub-owning business is not required to provide a rent proposal under regulation 15(1) by virtue of the application of regulation 15(5), unless the event mentioned in regulation 15(5)(a) occurs on or after the commencement date.

(5) A pub-owning business is not required to provide a rent proposal under regulation 15(1) by virtue of the application of regulation 15(6), unless the event mentioned in regulation 15(6)(a) occurs on or after the commencement date.

(6) A pub-owning business is not required to provide a rent proposal under regulation 15(1) by virtue of the application of regulation 15(7), unless the notification mentioned in regulation 15(7) occurs on or after the commencement date.

Rent assessments

66.—(1) The reference in regulation 19(1)(a) to a rent review which is required under the terms of a tenancy or licence does not include—

- (a) a rent review where the rent review date falls before the commencement date; or
- (b) a rent review which is concluded before the commencement date.

(2) A tied pub tenant may request, on or before the 5-year anniversary date, a rent assessment or an assessment of money payable in lieu of rent under regulation 19(2)(a) if, and only if—

- (a) no rent assessment or assessment of money payable in lieu of rent has been concluded before the date of the request; and
- (b) no rent review has been concluded within the period of 5 years ending with the date of the request.

(a) 2006 c.46.

(3) A tied pub tenant may not request a rent assessment or an assessment of money payable in lieu of rent under regulation 19(2)(b) unless the tenant first receives notification of the significant increase on or after the commencement date.

(4) A tied pub tenant may not request a rent assessment or an assessment of money payable in lieu of rent under regulation 19(2)(c) unless the tenant sends the written analysis mentioned in that paragraph on or after the commencement date.

(5) Paragraphs (6) and (7) apply where—

- (a) a pub-owning business is required to conduct a rent assessment or an assessment of money payable in lieu of rent under regulation 19(1)(a); and
- (b) the rent review date falls before the end of the period of 6 months beginning with the commencement date.

(6) Regulation 20(2)(a) does not apply; instead, the pub-owning business must provide the rent assessment proposal to the tied pub tenant before the end of the relevant period.

(7) In paragraph (6) “the relevant period” means—

- (a) where the rent review date falls before the end of the period of 3 months beginning with the commencement date, the period of 6 weeks beginning with the commencement date;
- (b) otherwise, the period of 12 weeks beginning with the commencement date.

(8) For the purposes of this regulation—

- (a) a rent review is concluded when the rent, or money payable in lieu of rent, is agreed in writing between the pub-owning business and the tied pub tenant;
- (b) a rent assessment is concluded when it ends (see regulation 22).

(9) In this regulation, the “5-year anniversary date” means the date which is 5 years after the commencement date.

Market rent only option: the MRO notice

67.—(1) References in regulation 23(1) to an event occurring do not include an event which occurred before the commencement date.

(2) The reference in regulation 25(1) to a relevant analysis which demonstrates that a trigger event has occurred does not include a relevant analysis which demonstrates that a trigger event has occurred before the commencement date.

PART 17

Review

Review of Parts 11 to 16

68.—(1) The Secretary of State must, for each review period, carry out a review of Parts 11 to 16(a) (and of Part 1 so far as it applies for the purposes of those Parts).

(2) As soon as practicable after a review period, the Secretary of State must publish a report of the findings of the review for that period.

(3) The first review period is the period beginning on the commencement date and ending 2 years after the following 31 March.

(4) Subsequent review periods are each successive period of 3 years after the first review period.

(a) Parts 2 to 10 of these Regulations are made under sections 42 to 44 of SBEEA 2015 and are, accordingly, “the Pubs Code” for the purposes of SBEEA 2015 (see section 42(2)). Section 46 of SBEEA 2015 requires the Secretary of State to review the Pubs Code.

20th July 2016

Margot James
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

SCHEDULE 1

Regulations 11, 12 and 14

Information specified for the purposes of a new agreement etc.

Regulations and code of practice

1. The Pubs Code etc. Regulations 2016.
2. Where the pub-owning business has a code of practice which is relevant to its dealings with the tied pub, a copy of that code.

The type of tenancy or licence

3. An overview of the different tenancies or licences offered to tied pub tenants by the pub-owning business.
4. Whether the tenancy offered by the pub-owning business is a protected 1954 Act tenancy and the process for the renewal of such a tenancy, or any other tenancy, including when notification to renew, or otherwise, must be given.
5. Whether there is a superior landlord and, if so, the name and address of the superior landlord.
6. The length of the tenancy, licence or relevant tie agreement offered to the tied pub tenant by the pub-owning business, including the date on which the tenancy, licence or relevant tie agreement is to begin and the date on which it is to end (“the end-date”).
7. Whether the tied pub tenant or the pub-owning business may terminate the tenancy, licence or relevant tie agreement before the end-date.
8. Details of the pub-owning business’s procedures for responding to any request by the tied pub tenant to terminate the tenancy, licence or relevant tie agreement before the end-date.
9. In paragraphs 6 to 8 a “relevant tie agreement” is an agreement of the kind described in section 43(8)(b) of SBEEA 2015 where the terms of that agreement are not included in the tenancy or licence offered to the tenant.

The premises

10. A full and clear description of the premises to which the tenancy or licence relates, including—
 - (a) details of the premises licence, within the meaning of section 11 of the Licensing Act 2003(a) and any licence conditions;
 - (b) details of any enforcement action taken by any public authority in connection with the tied pub during the previous 2 years, where known;

(a) 2003 c.17.

- (c) details of any foreseeable material changes to the commercial conditions in the tied pub's local area and how these might influence the costs and trading environment of the tied pub tenant;
- (d) details of any restrictions on the use of the premises, such as planning constraints, restrictions on types of trading, restrictions on access to the premises (including details of any shared access) and hours of trading;
- (e) a Schedule of Condition;
- (f) details of any specific problems in the premises.

11. Whether the fixtures and fittings in the tied pub are required to be purchased by the tied pub tenant under the tenancy or licence and, if so, the arrangements for the payment for such fixtures and fittings.

Maintenance and repair

12. The respective obligations of the pub-owning business and the tied pub tenant under the tenancy or licence or pursuant to any other document, such as a code of practice, in relation to repairing and maintaining the premises to which the tenancy or licence relates.

13. The pub-owning business's procedures for discharging its obligations to repair and maintain the premises under the tenancy or licence, including the procedure by which a tied pub tenant can raise concerns about the discharge of those obligations.

14. Where the tenancy or licence requires the tied pub tenant to repair or maintain the premises to which the tenancy or licence relates, confirmation that, unless otherwise specified in the tenancy or licence, the requirement is to keep or maintain the premises in the condition set out in the Schedule of Condition.

15. The procedures to be followed in connection with the respective obligations of the pub-owning business and the tied pub tenant under the tenancy or licence in relation to assessing and making good dilapidations, including—

- (a) the time when the Schedule of Condition may be reviewed;
- (b) if applicable, the process for agreeing the works which must be carried out in the light of a review of the Schedule of Condition;
- (c) where the tenant is responsible for remedying, or paying for, any dilapidations, the period before the end of the tenancy when a survey will be carried out to determine the extent of dilapidations;
- (d) the process for resolving a dispute in connection with any obligation under the tenancy or licence to maintain, repair and make good.

16. Where, before entering into a new agreement, a short agreement, or an agreement to renew a tenancy which not a protected 1954 Act tenancy, the pub-owning business is aware of any maintenance, repair or improvement works ("initial works") which must be carried out to the premises to which the tenancy or licence relates—

- (a) a Schedule of Condition prepared before the initial works are carried out;
- (b) a list of the initial works which must be carried out;
- (c) the respective obligations of the tied pub tenant and the pub-owning business in relation to those works under the tenancy or licence;
- (d) details of any initial works which are required to be completed before the agreement or the renewal is in force including whether the pub-owning business or the tenant will be responsible for carrying them out;
- (e) where any of the initial works—
 - (i) are to be carried out to improve the premises significantly; or
 - (ii) require a significant investment of capital,

- a sketch or an artist's plan (if any) of those works; and
- (f) where any of the initial works are to be carried out after the agreement has been entered into or after the renewal has been agreed —
- (i) whether the pub-owning business or the tenant will be responsible for carrying out the works;
 - (ii) the date on which the works must be completed; and
 - (iii) any penalty in respect of a failure to complete the works, or to complete them by a certain date.

17. Any requirements under the tenancy or licence in relation to the condition in which the premises to which the tenancy or licence relates are to be returned to the pub-owning business at the end of the tenancy or licence.

18.—(1) The pub-owning business's policy for investing in the premises to which the tenancy or licence relates by way of improvements and refurbishments to those premises, including any policy on joint investment with its tied pub tenants.

(2) Where, at the time the information under this Schedule is sent to the tenant, the pub-owning business is considering investing in the premises, the information required under sub-paragraph (1) includes details of the potential impact of any such investment on the rent, money payable in lieu of rent or other payments which the tied pub tenant must pay under the tenancy or licence.

19. The respective obligations of the pub-owning business and the tied pub tenant under any enactments in relation to—

- (a) utilities at the tied pub, such as electrics, gas, water or sewerage; and
- (b) environmental impact, health and safety.

Obligations in relation to the purchase of tied products and services

20. Details of any obligations to purchase products or services subject to a product or service tie including—

- (a) the current price list for those products or services and notification of any imminent changes to that list;
- (b) any discounts which may be available to the tied pub tenant in connection with the purchase of those products or services;
- (c) whether the tenancy or licence authorises the tenant to purchase any food, drink or services which are not subject to a tie and, if so, the details of that authorisation;
- (d) if gaming machines are offered to the tied pub under the tenancy or licence, the terms on which they are supplied, including details of the arrangements for the distribution of income from the machines and an outline of the trading, payment and credit terms in relation to them.

Assignment

21. In the case of a tenancy—

- (a) whether the tenancy may be assigned or sold and, if so, the procedures which the tied pub tenant must follow to assign or sell the tenancy; and
- (b) the procedures which the pub-owning business must follow where the tied pub tenant makes a request to assign or sell the tenancy.

Advice and support

22.—(1) The advice and support available to the tied pub tenant during the tenancy or licence, including advice and support in respect of—

- (a) the capabilities and training needs of the tied pub tenant and the tenant's employees;

- (b) licences and any relevant training requirements in relation to those licences;
- (c) brand promotion and merchandising;
- (d) provision and maintenance of dispensing equipment;
- (e) pub promotion and marketing;
- (f) other aspects of business management which are significant, in the pub-owning business's opinion;
- (g) the benefits which the tied pub tenant may expect to enjoy as a consequence of the pub-owning business's ability to procure and supply products, services and expertise to the tied pub tenant;
- (h) business rates; and
- (i) the exterior decoration of the premises, the signs, repairs to the building, car parks and gardens (where relevant).

(2) The information required under sub-paragraph (1) is not required to be provided to a tied pub tenant who is already subject to a tenancy or licence granted by the pub-owning business in relation to a tied pub unless that information has changed since the tied pub tenant received it in connection with that tenancy or licence.

23. The pub-owning business's policy (if any) for dealing with requests for assistance from the tied pub tenant in cases of difficulties in respect of the tenancy or licence which are beyond the tenant's control.

24. The circumstances (if any) in which the pub-owning business may be willing to consider amendments to its standard terms.

25. The events, the occurrence of which, entitle the tied pub tenant, under regulation 23, to give an MRO notice.

Insurance

26. Whether, under the tenancy or licence—

- (a) the pub-owning business is responsible for insuring the premises and, if so, whether the pub-owning business requires an insurance charge; or
- (b) the tenant is responsible for insuring the premises.

27. Where the tied pub tenant is responsible for insuring the premises, any minimum requirements for insurance under the tenancy or licence.

Payment of rent and deposits

28.—(1) The arrangements for the payment of deposits, including—

- (a) the amount of any deposit ("the deposit") payable by the tied pub tenant to the pub-owning business for the purposes of securing the tenancy or licence;
- (b) the period for which the deposit is likely to be retained by the pub-owning business;
- (c) the arrangements for paying to the tied pub tenant any interest accruing on the deposit;
- (d) the circumstances in which the deposit may be required to be increased under the tenancy or licence;
- (e) when and how the deposit will be repaid to the tied pub tenant;
- (f) how the deposit is to be treated if the pub-owning business becomes insolvent.

(2) The information required under sub-paragraph (1) is not required to be provided to a tied pub tenant in connection with the renewal of a protected 1954 Act tenancy unless the pub-owning business proposes to change the arrangements for the payment of rent, money payable in lieu of rent and other deposits on the renewal.

29. Where the tenancy or licence provides that the rent or money payable in lieu of rent is to be varied by reference to an index—

- (a) the index used;
- (b) when the indexation rate will be assessed and applied; and
- (c) an illustration of the impact which the indexation rate will have on the rent, or money payable in lieu of rent, during the tenancy or licence, using, by way of example, the indexation rate at the time the information under this Schedule is sent to the tenant.

30. In cases where damage to the premises to which the tenancy or licence relates impacts on the tied pub's potential for trading, the pub-owning business's policy in respect of the temporary suspension of—

- (a) rent or money payable in lieu of rent; and
- (b) minimum purchasing requirements under the tie.

31. Information in respect of other support available in cases where damage to the property impacts on the tied pub's potential for trading.

32. Details of any other fees, charges, including service charges, or financial penalties which the tied pub tenant may be required to pay during the tenancy or licence.

Additional information where new agreement is a pub franchise agreement

33.—(1) Where the new agreement being entered into is a pub franchise agreement—

- (a) information about any initial and ongoing fees payable by the tenant to the pub-owning business under the agreement;
- (b) details of the fixed share of turnover or the relevant share of turnover granted to the tied pub tenant;
- (c) a description of the new agreement which demonstrates that it is a pub franchise agreement; and
- (d) a forecast of a profit and loss statement for the tied pub for the period of 12 months beginning with the day on which the franchise agreement is proposed to be entered into (“the franchise forecast period”).

(2) The statement required under sub-paragraph (1)(d) must include the figures and other information specified in paragraph 5(a) to (i) of Schedule 2 to these Regulations.

(3) For the purposes of the duty under sub-paragraph (1)(d), references in paragraph 5 of Schedule 2 to the “forecast period” must be read as references to “the franchise forecast period”.

Other obligations

34. Information in respect of any obligation which the tied pub tenant may have in connection with the Transfer of Undertakings (Protection of Employment) Regulations 2006(a).

Breaches

35. The pub-owning business's procedures for establishing whether the tied pub tenant has breached the tenancy or licence.

36. Where a tied pub tenant is in breach of the tenancy or licence, the pub-owning business's procedures for informing the tied pub tenant that the tenant is in breach and whether the tenant will have opportunities to remedy the breach before any enforcement action is taken.

(a) S.I. 2006/246, amended by S.I. 2010/93, 2014/16, 2014/386 and 2014/853.

37. Information about the procedures which may be followed by the tied pub tenant in cases where the tenant considers that the pub-owning business has failed to comply with the provisions of these Regulations.

SCHEDULE 2

Regulations 16 and 20

Information specified for the purposes of a rent proposal or a rent assessment proposal

1. A summary of the methods which must be used under the tenancy or licence to calculate the initial or revised rent or the new rent including—

- (a) the information which will be used to support those calculations;
- (b) the justification for the use of such information.

2. An outline of the procedure to be followed during negotiations of the initial or revised rent or the new rent between the pub-owning business and the tied pub tenant.

3. A list of the matters which will be considered to be relevant and irrelevant in such negotiations.

4. Information in respect of the cost of service charges relating to the tied pub during the last 3 years.

5. A forecast profit and loss statement for the tied pub for the period of 12 months beginning with the day on which the initial or revised rent or the new rent is payable (“the forecast period”) and the figures and other information which have been relied on to formulate that statement, including—

- (a) the volume of alcohol, including the number of barrels of alcohol, purchased during the last 3 years from the pub-owning business or its agents;
- (b) the percentage of the tied pub’s turnover during the last 3 years which the sale of this volume of alcohol represents;
- (c) if different from the figure in (a), the volume of alcohol in respect of which duty was paid during the last 3 years;
- (d) a figure for the total estimated sales and gross profit margins of the tied pub for the forecast period, with a breakdown showing separate figures for the estimated sales, gross profit margins, for—
 - (i) draught ales;
 - (ii) draught lagers;
 - (iii) packaged beers;
 - (iv) draught ciders;
 - (v) packaged ciders;
 - (vi) wines;
 - (vii) spirits;
 - (viii) flavoured alcoholic beverages; and
 - (ix) soft drinks;
- (e) the percentage of the pub’s turnover for the forecast period which each drink in subparagraph (d)(i) to (ix) represents;
- (f) an estimate figure for the volume of draught beer and cider which will not be sold during the forecast period (including draught beer and cider wasted, unfit for sale or dispensed in promotions) where that figure has not been accounted for in the gross profit margin;

- (g) the estimated operating costs likely to affect the tied pub tenant's profit during the forecast period including, where relevant, the estimated cost of a manager during that year, where the tied pub tenant is not the manager of the tied pub;
- (h) an explanation of how estimated income during the forecast period from any gaming machine, in the tied pub has been accounted for in the statement;
- (i) a breakdown of any costs during the forecast period which have not been accounted for separately but have been included in the estimated figures for other costs (for example, the cost of cellar gas).

6. The figures which are provided under paragraph 5 must be provided net of value added tax or machine games duty (within the meaning of Schedule 24 to the Finance Act 2012(a)).

7. The profit and loss statement provided under paragraph 5 must refer to relevant and current data available publicly in connection with the typical costs of operating a tied pub in the United Kingdom and explain any variance between the costs referred to and the pub-owning business's costs estimate.

8. The statement, figures and other information which the pub-owning business provides to the tied pub tenant under paragraphs 5 to 7 must —

- (a) be sufficiently clear and detailed; and
- (b) include justification or supporting evidence for any assumptions,

to allow the tenant to understand the basis on which the estimated figures in the statement have been calculated.

9. Any information which the pub-owning business provides under paragraph 5, must be—

- (a) accurate, wherever it refers to historical data; and
- (b) reasonable, wherever it refers to projected data.

10. In paragraph 5(c) “duty” means any duty of excise charged on beer by section 36(1) or section 37(1) of the Alcoholic Liquor Duties Act 1979(b).

11. Any information in Schedule 1 which—

- (a) the tied pub tenant has not already received; or
- (b) has changed materially since it was provided to the tenant.

12. A timetable specifying the dates on which any other information will be made available to the tied pub tenant before negotiations begin.

SCHEDULE 3

Regulation 37

Documents to which the independent assessor must have regard

1. Documents held by the tied pub tenant or the pub-owning business which provide evidence of the tied pub's level of trading in the last 3 years.

2. Documents held by the tied pub tenant or the pub-owning business which present a reasonable forecast of the tied pub's level of trading for the next 3 years.

3. For the purposes of paragraph 2, a “reasonable forecast” is a forecast which—

(a) 2012 c.14. Schedule 24 was amended by section 124(2) to (4) of, and paragraph 31(2) to (4) of Schedule 28 to, the Finance Act 2014 (c.26).

(b) 1979 c.4. Section 36(1) was substituted by section 7(1) of the Finance Act 1991 (c.31) and then amended by paragraph 1(2) of Schedule 1 to the Finance Act 2002 (c.23). Section 37(1) was inserted by paragraph 1 of Schedule 1 to the Finance Act 2011 (c.11).

- (a) is based on an assessment of the level of trading at the tied pub if it were operated by a reasonably efficient tenant; and
- (b) may be based on an assessment of the pub's level of trading if it were not subject to a product or service tie.

4. Documents held by the tied pub tenant or the pub-owning business which describe any special commercial or financial advantages provided to the tied pub tenant under the terms of the tenancy or licence.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the first to be made under sections 42 to 45, 48, 69 and 71 of the Small Business, Enterprise and Employment Act 2015 (“SBEEA 2015”).

Section 42 of SBEEA 2015 requires the Secretary of State to make regulations about practices and procedures to be followed by pub-owning businesses in their dealings with their tied pub tenants. A “pub-owning business” is a landlord of 500 or more tied pubs. Parts 2 to 4 of these Regulations make provision in connection with such dealings.

Part 2 requires pub-owning businesses, before they enter into new agreements with their tied pub tenants, to advise tenants to complete appropriate training, to ensure that tenants have a sustainable business plan and to provide certain information to the tenants. This Part also places obligations on pub-owning businesses in relation to the maintenance of tied pub premises and in connection with a tenant's proposal to assign a tenancy.

Parts 3 and 4 require pub-owning businesses to provide rent proposals and rent assessments, respectively, to their tied pub tenants in certain specified circumstances and include provision about the contents and timing of such proposals and assessments.

Section 43 of SBEEA 2015 provides that regulations must be made requiring pub-owning businesses to offer certain tied pub tenants a market rent only option (an “MRO option”) in circumstances specified in that section. An MRO option is an option for the tenant to occupy the tied pub under a tenancy or licence which is MRO-compliant and to pay, in respect of that occupation, a rent agreed between the parties or, failing such agreement, the market rent.

Part 5 describes the four circumstances in which a tenant may request an MRO option. Part 6 requires the pub-owning business to provide a full response to the tenant's request. It also describes the nature of an MRO-compliant tenancy or licence and the negotiation period which follows that response. Part 7 describes the involvement of the independent assessor where, during the negotiation period, the parties fail to agree the rent to be payable under the MRO-compliant tenancy or licence. Part 8 describes the point at which this MRO procedure ends.

Part 9 describes the obligations of pub-owning businesses in respect of their business development managers and requires pub-owning businesses to appoint a compliance officer who is to submit an annual compliance report to the Pubs Code Adjudicator (“the Adjudicator”).

Part 10 places further obligations on pub-owning businesses in respect of matters such as insurance, gaming machines and flow monitoring devices.

A reference in SBEEA 2015 to “the Pubs Code” is a reference to Parts 2 to 10 of these Regulations.

Where a landlord ceases to be a pub-owning business, SBEEA 2015 provides that its tenants continue to have extended protection until the earlier of the end of the tenancy or licence concerned or until a rent assessment occurs. Part 11 of these Regulations describes, for these purposes, when a tenancy or licence ends and when a rent assessment occurs.

Part 12 exempts short agreements and pub franchise agreements from certain provisions of these Regulations. It also provides that the tenant may not request an MRO option in all four

circumstances described in Part 5, where an investment agreement has been entered into between a pub-owning business and a tied pub tenant.

Part 13 describes the terms of a tenancy which will render it void.

Part 14 makes provision for the Adjudicator's functions in connection with the resolution of disputes relating to the offer of an MRO option.

Part 15 describes the circumstances in which a person who is a group undertaking in relation to a pub-owning business may, if the Adjudicator so determines, be treated.

Part 16 makes transitional provision.

Part 17 requires the Secretary of State to carry out a review of those provisions which are not the Pubs Code.

An Impact Assessment has been prepared for these Regulations and is published at www.legislation.gov.uk.

EXPLANATORY MEMORANDUM TO
THE PUBS CODE ETC. REGULATIONS 2016
2016 No. 790

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Pubs Code etc. Regulations 2016 regulate practices and procedures to be followed by large pub-owning businesses (defined in the Small Business, Enterprise and Employment Act 2015 (the SBEE Act) as those owning 500 or more tied pubs) in their dealings with their tied pub tenants. The Regulations are consistent with the principles of fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants, and that tied pub tenants should not be worse off than they would be if they were not subject to any product or service tie.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 A draft of this instrument was previously laid before Parliament on 14 April, and considered by the Joint Committee on Statutory Instruments. The Committee sent a memorandum on 27 April 2016 to which a response was sent by the Department on 28 April 2016. The regulations were withdrawn by the Department on 4 May 2016 in order to correct a small number of drafting errors. The instrument now laid is therefore a revised version of the regulations previously laid.
- 3.2 The changes to address the drafting errors principally involve amendments to provisions relating to the interaction of the Landlord and Tenant Act (LTA) 1954 and the market rent only (MRO) process to ensure that if a tied tenancy was ‘contracted-in’ under the LTA, then the new MRO tenancy should also be contracted-in.
- 3.3 Other drafting amendments clarify: the MRO procedure including for example the arrangements for making MRO-related referrals to the Pubs Code Adjudicator and independent assessor; the procedures for recovering rent at the end of a rent assessment; the procedure in Part 5 for demonstrating that a trigger event has occurred; the documents which may be regarded as containing unreasonable terms and conditions and the grounds for referring an investment agreement to the Adjudicator.
- 3.4 In addition, following feedback from key stakeholders, the opportunity has been taken to improve the procedures in Part 1 for assessing a significant increase in price for tied products and services.
- 3.5 New drafting provides that the comparison for establishing whether there has been a significant increase in price would take place only if it was shown that the unit price of at least one product had actually increased.

- 3.6 Other refinements mean that the comparison would include only products that were the same in each period. This means for example that for regulation 4 (alcoholic drink other than beer) there is no longer the possibility of comparing premium products against non-premium products. The regulations require the comparison of all relevant products to determine whether there has been a significant increase in price.
- 3.7 Further changes require that the comparison is made of the cost at comparison period prices (12 months ago) against the cost at current period prices (now) but on the basis of the same quantity (that invoiced in the comparison period). This is to prevent the scenario that changes in the amount of product or service ordered might itself trigger MRO. This also has the effect of simplifying the calculation and removes the requirement to calculate the average unit price.
- 3.8 Finally amendments to elements of the formula for calculating the significant increase in price comprise: (i) replacing Producer Price Indices with the Consumer Price Index (CPI), with any negative movements in the index treated as zero, (ii) amending regulation 4 ‘other alcoholic drinks’ so the tolerance in the formula is increased from 6 to 8 percentage points, and (iii) disregarding non-contractual discounts, VAT and duty from the prices used.
- 3.9 This instrument will commence on the day after the day on which it is made. There would usually be a 21-day period between the making and commencing of such an instrument since it will have the effect of requiring different patterns of behaviour due to a change in the nature of the obligations imposed on pub-owning businesses and tied tenants. This 21-day period is being curtailed in light of the statutory deadline for introducing the Pubs Code, being 26 May 2016, and for the following reasons.
- 3.10 The pub-owning businesses and tied tenants affected by these Regulations have been aware since March 2015 that the Pubs Code, and associated regulations, should have come into force by 26 May 2016 and have been planning on this basis. This implementation date was a duty placed on the Secretary of State via the SBEE Act, and was also made clear in the detailed consultation documents and associated draft regulations that were published on 29 October and 4 December 2015. This date for implementation reflected the will of Parliament, both through the SBEE Act and during discussions in both Houses about the Pubs Code during the passage of the Enterprise Act 2016. Pub-owning businesses and their tied tenants in England and Wales were expecting it to come into force on 26 May 2016 regardless of whether they expected its impact on them to be positive or negative.
- 3.11 Unfortunately due to drafting issues which necessitated the withdrawal and revision of the previous version of this instrument, that statutory deadline has not been met. However, it is the Department’s intention that the delay should be kept to an absolute minimum and this instrument should be in force as close to that deadline as possible in order to offer the protection of the Code to tied tenants. Accordingly, in all the circumstances, there are strong reasons for curtailing the usual 21-day period, and providing instead that this instrument commences the day after it is made.

Other matters of interest to the House of Commons

- 3.12 This entire instrument applies only to England and Wales.
- 3.13 This instrument applies only in England and Wales because Part 4 of the SBEE Act applies only in England and Wales.

- 3.14 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.

4. Legislative Context

- 4.1 Part 4 of the SBEE Act requires the introduction of a statutory Pubs Code for England and Wales setting out obligations on certain pub-owning businesses in their dealings with their tied pub tenants, and provides for an independent Pubs Code Adjudicator to enforce it. Part 4 also provides additional powers to make regulations on matters relating to the Pubs Code which are now included in this instrument. An earlier draft of this instrument was published for consultation, with responses due by 18 January 2016. The Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016, also made under Part 4 of the SBEE Act, contain related provisions and are being laid at the same time as these regulations.

Commitments were made by ministers during the passage of the SBEE Act to make and consult on certain provisions within secondary legislation. These were:

- To provide ‘extended code protections’ for tied tenants whose pub is sold to a business not in scope of the Code.
- To ensure that under the Code tied tenants can receive a Parallel Rent Assessment as well as an MRO option.
- To provide for a deferral of certain points at which the MRO option would be available for tenants in exchange for ‘significant investment’.
- To provide for an exemption for ‘genuine pub franchise agreements’ from the right to MRO.

- 4.2 The provisions relating to the MRO option reflect the provision made in the Enterprise Act 2016 to ensure that the Pubs Code will require pub-owning businesses to offer tied pub tenants a MRO option in connection with a rent assessment whether the rent proposed is an increase, decrease or stays the same.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales only.
- 5.2 The territorial application of this instrument is set out in Section 3 under “Other matters of interest to the House of Commons”.

6. European Convention on Human Rights

- 6.1 The Parliamentary Under Secretary of State has made the following statement regarding Human Rights:

“In my view the provisions of the Pubs Code etc. Regulations 2016 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 Further to recommendations by Trade and Industry Select Committees from 2004 onwards, the pubs industry introduced a voluntary code of practice to address shortcomings in the relationship between tied pub tenants and their brewery and pub company landlords. Despite some improvements, in November 2011, the Government announced that it was giving the industry one last chance to deliver a self-regulatory approach that would address the problems.
- 7.2 Following a call for evidence in October 2012, it became clear that the self-regulatory approach has not been sufficiently far-reaching. Although many pub companies treat their tenants well, publicans continued to highlight cases in which they had been treated unfairly and suffered significant hardship. The Government consulted on a statutory framework in 2013 and published a response in 2014 that concluded that two core principles were critical to address the problems. These were: that tenants should be treated fairly, and that the tied tenant should be no worse off than the free-of-tie tenant. It also concluded that “the best way to deliver these core principles is to introduce a Statutory Code to govern the relationship between pub owning companies and their tied tenants.”
- 7.3 Part 4 of the SBEE Act implemented these findings by requiring the Secretary of State to make regulations – The Pubs Code – about practices and procedures to be followed by pub-owning businesses in their dealings with their tied tenants in England and Wales. The SBEE Act requires the Code to be consistent with the two core principles, redefined slightly as: the principle of fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants and the principle that tied pub tenants should not be worse off than they would be if they were not subject to any product or service tie. The SBEE Act also defines a tied pub tenant and a pub-owning business for these purposes, establishes a Pubs Code Adjudicator and lists various issues on which the Pubs Code must or may contain provisions. These include, among others, provisions relating to the offer of an MRO option to tied tenants in particular circumstances, the provision of information by pub-owning businesses to their tied tenants, requirements relating to rent assessments, and whether some provisions of the Code should be non-arbitrable.
- 7.4 The Pubs Code sets out the requirements on pub-owning businesses – defined in the SBEE Act as those with 500 or more tied pubs in England and Wales – in relation to procedure and information to be provided to tenants and licensees in connection with new tied tenancy and licence agreements, assignments, rent proposals, rent assessments, repairing obligations and the MRO option. The MRO option allows the tied tenant to continue to occupy their pub but under a tenancy or licence that does not contain any product or service ties (other than for buildings insurance) and for which the tenant pays a market rent. The tenant has a right to establish the market rent through referral to an Independent Assessor under the MRO procedure in the Pubs Code. The Pubs Code also defines conditions that qualify a tenancy or licence as MRO-compliant.
- 7.5 Other information and advice that pub-owning businesses have to provide to their tenants and licensees relate to specific events such as buildings insurance renewal and the sale of the superior lease or freehold.

- 7.6 The Code also sets out the applicable timetables and processes to be followed when these different events occur. These include:
- The rent assessment and MRO processes;
 - Ensuring that new tenants consider independent professional advice in preparing a sustainable business plan, which must have been agreed with the pub-owning business before the two parties may sign a new agreement; and
 - Details of dispute procedures not covered fully by Part 4 of the SBEE Act.
- 7.7 Six businesses are expected to meet the definition of pub-owning businesses when the Pubs Code comes into force. They own approximately 12,000 tied pubs in England and Wales.
- 7.8 Part 4 of the SBEE Act contains regulation making powers for matters relating to the Pubs Code. The remaining parts of this instrument are made in exercise of those powers.
- 7.9 There are exemptions from all or part of the Code for certain categories of tied pub (short agreements and franchises), of landlord (those no longer qualifying as a pub-owning business or who have purchased a tied pub from a pub-owning business) and of event (investment agreements between a pub-owning business and its tied tenant). These exemptions are set out in the regulations. The regulations also cover what constitute void and unenforceable terms in a tenancy or licence.
- 7.10 There are requirements relating to representatives and employees of pub-owning businesses (business development managers and compliance officers); circumstances in which a group undertaking of the pub-owning business may be treated as a pub-owning business itself, e.g.: during investigations and arbitrations; and transitional arrangements in the period following the commencement of the Pubs Code.

Consolidation

- 7.11 There is no need for any consolidation.

8. Consultation outcome

- 8.1 A consultation on the measures in these regulations was carried out in two parts, from 29 October 2015 and 4 December 2015, with a common closing date of 18 January 2016 – see <https://www.gov.uk/government/consultations/pubs-code-and-adjudicator-market-rent-only-option-and-rent-assessments> and <https://www.gov.uk/government/consultations/pubs-code-and-adjudicator-fees-enforcement-and-other-parts-of-the-code>.
- 8.2 The consultation sought views on how to implement the Pubs Code and make the related regulations, including disputes arising in relation to the MRO process, the exception from MRO entitlement in return for significant investment, the rent assessment trigger for the MRO option and in particular whether to remove its rent increase condition, plans to ensure the regulations fulfil the objectives of a parallel rent assessment in relation to the MRO option and requirements to provide information on a tied rent offer, arrangements for rent assessments, types of agreement outside the scope of some or all of the code, the type and timing of information provided to tied tenants, repair and maintenance obligations, Pubs Code Adjudicator fees, the maximum financial penalty for breaches of the Code, and extended code protection when a tied pub's landlord stops being a 'pub-owning business' as defined in the legislation.

- 8.3 80 responses were received. These included responses from all six of the pub-owning businesses expected to come within scope of the Code; from organisations representing tenants, consumers and businesses that own pubs; from individual pub tenants/ex-tenants; and from other professionals and organisations working with the industry. Further comments and feedback were received at meetings and workshops organised by the Department of Business, Innovation and Skills for that purpose and from discussions in Parliament, particularly during the passage of the Enterprise Bill.
- 8.4 The Government decided to make a number of changes and improvements as a consequence of helpful and constructive responses to the consultation. The principal ones were: to remove the proposed restriction that the MRO option should become available only when an increased rent was proposed but to allow it regardless of the level of rent proposed; to change the basis on which a ‘significant price increase’ would be calculated for the purpose of triggering an MRO option; to cut back the weight of information requirements on pub-owning businesses in ways that would still offer similar protections to tied pub tenants; and to clarify that pub-owning businesses would be permitted to carry out routine checks – though not to negotiate terms – before providing stipulated information to prospective tenants.
- 8.5 The responses to the consultation also helped the Government with decisions on other matters. These included:
- Conditions for the investment exception which allows the deferral of the right to an MRO option in exchange for a significant investment in the tied pub – including the minimum size of such an investment and the maximum period for the exception;
 - The maximum period for which short agreements should be exempted from most Pubs Code provisions (12 months); and which provisions should still apply to them;
 - The definition of those tied pub franchises which would be exempt from some parts of the Code; and some additional requirements in respect of those franchised tenancies;
 - To make some Code provisions non-arbitrable: relating to the role and duties of compliance officers and the training of business development managers.
- 8.6 The Government’s response to the consultation was published on 14 April 2016 and can be found at: www.gov.uk/government/consultations/pubs-code-and-adjudicator-fees-enforcement-and-other-parts-of-the-code .

9. Guidance

- 9.1 It is a requirement of section 61(1) of the SBEE Act that the Pubs Code Adjudicator must issue guidance within 6 months of being established about:
- Criteria the Adjudicator intends to adopt in deciding whether to carry out investigations;
 - Practices and procedures the Adjudicator intends to adopt in carrying out investigations;
 - Criteria the Adjudicator intends to adopt in choosing whether to use the enforcement powers and which ones;
 - Criteria the Adjudicator intends to adopt in deciding the amount of any financial penalty following an investigation.

- 9.2 In addition, sections 61(2) and (3) state the Adjudicator may publish guidance on:
- Practices and procedures the Adjudicator intends to adopt in carrying out other functions;
 - The application of any provision of the Pubs Code;
 - Steps that pub-owning businesses need to take in order to comply with the Pubs Code;
 - Any other matter relating to the Pubs Code.
- 9.3 Before publishing guidance under section 61 the Adjudicator must consult any persons he thinks appropriate.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is estimated to be an annual reduction on the burden of business of £73,000. This reduction is as a result of the secondary legislation, and is relative to the overall impact estimated in the primary legislation of an annual net cost to business of £2.69m.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment is submitted with this memorandum and has been published at <http://www.legislation.gov.uk/ukdsi/2016/978011146330/impacts>.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The Pubs Code Adjudicator is required by section 62 of the SBEE Act to prepare and publish a report each year covering the period to 31 March; and to send a copy to the Secretary of State, who must lay it before Parliament. That report must include a summary of his enforcement activities in relation to this instrument; arbitrations conducted, investigations carried out, and enforcement measures applied.
- 12.2 The Pubs Code Adjudicator is required by section 40 of the Enterprise Act 2016 to report to the Secretary of State on cases of pub-owning businesses engaging in what the Adjudicator considers to be unfair business practices. The report should include recommendations for actions to prevent these practices and how to provide redress for tied pub tenants affected by them. The Secretary of State is required to issue a statement within three months saying what action he intends to take or the reasons for not taking action.
- 12.3 The Secretary of State is required by section 46 of the SBEE Act to review the operation of the Pubs Code and, as soon as practicable after a review period, to publish a report of the findings of that review and to lay a copy before Parliament. That report must set out the extent to which in his opinion the Pubs Code is consistent with the principles described in paragraph 7.3 above, and whether there are any revisions of the Code which would enable it to reflect more fully those principles. The first review period will end on 31 March 2019. Subsequent review periods will end every three years after that. In respect of additional provisions contained within this instrument which are not within the Pubs Code, regulation 68 provides for a review of those to be carried out to the same timetable as the review of the Pubs Code.

- 12.4 The Secretary of State is required by section 65 of the SBEE Act to review the Adjudicator's performance and, in particular, how effective he has been in enforcing the Pubs Code, to publish a report of those findings and to lay the report before Parliament. The first review period will end on 31 March 2019. Subsequent review periods will end every three years after that. As a result of the findings of a review, the Secretary of State may give guidance to the Adjudicator about any matter relating to the Adjudicator's functions and the Adjudicator must take account of that guidance.
- 12.5 If as the result of the findings of this performance review, the Secretary of State is satisfied that there is no further need for an Adjudicator to secure compliance with the Pubs Code or that the Adjudicator has not been sufficiently effective in securing compliance with the Code, he may by regulations abolish the Adjudicator.

13. Contact

- 13.1 Michael Penry at the Department for Business, Energy and Industrial Strategy (Tel: 020 7215 0345 or email: mike.penry@bis.gsi.gov.uk) can answer queries regarding the regulations.

2016 No. 802

ENTERPRISE, ENGLAND AND WALES

**The Pubs Code (Fees, Costs and Financial Penalties)
Regulations 2016**

Made - - - - *20th July 2016*

Coming into force in accordance with regulation 1(b)

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 45(4), 51(2), (3)(a) and (7), 58(6) and 161(2)(a) to (d) of the Small Business, Enterprise and Employment Act 2015(a).

In accordance with sections 73(1) and 161(4) of the Small Business, Enterprise and Employment Act 2015, a draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1. These Regulations—
- (a) may be cited as the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016;
 - (b) come into force on the day after the day on which they are made; and
 - (c) extend to England and Wales.

Interpretation

2. In these Regulations—
- “SBEEA 2015” means the Small Business, Enterprise and Employment Act 2015;
 - “MRO dispute” means a dispute relating to the offer of a market rent only option(b).

MRO disputes: fees, costs etc.

- 3.—(1) This regulation applies where—
- (a) a tied pub tenant(c) or a pub-owning business(d) refers an MRO dispute to the Adjudicator(e) (“the referral”) under the Pubs Code etc. Regulations 2016(f); or
 - (b) a tied pub tenant gives notice (“the notice”) under regulation 60(2) of those Regulations that the tenant wishes the Adjudicator to be appointed to arbitrate an MRO dispute.

(a) 2015 c. 26.
(b) Section 43(2) of SBEEA 2015 defines “market rent only option”.
(c) Section 70(1) of SBEEA 2015 defines “tied pub tenant”.
(d) Section 69 of SBEEA 2015 defines “pub-owning business”.
(e) Section 72(1) of SBEEA 2015 defines “the Adjudicator”.
(f) S.I. 2016/790

(2) The person who makes the referral or gives the notice must pay a fee of £200 to the Adjudicator at the time the referral is made or the notice is given.

(3) The pub-owning business must pay the reasonable fees and expenses of the Adjudicator (or of the person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b) of the Pubs Code etc. Regulations 2016) in respect of the arbitration, except where—

- (a) the tenant made the referral or gave the notice; and
- (b) the Adjudicator (or the person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b) of the Pubs Code etc. Regulations 2016) concludes that the referral or notice was vexatious.

(4) The Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b) of the Pubs Code etc. Regulations 2016) may order the tied pub tenant to pay an amount in respect of the pub-owning business's costs relating to the arbitration.

(5) The maximum amount the tied pub tenant may be ordered to pay is—

- (a) where paragraph (6) applies, the pub-owning business's full costs of the arbitration;
- (b) otherwise, £2,000.

(6) This paragraph applies where the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b) of the Pubs Code etc. Regulations 2016) considers that—

- (a) the referral or the notice was vexatious; or
- (b) the tied pub tenant's conduct in connection with the arbitration has resulted in an unreasonable increase in the costs of the arbitration.

Disputes which are not MRO disputes: fees and costs of arbitration

4.—(1) This regulation applies where a tied pub tenant—

- (a) refers a dispute to the Adjudicator under section 48 of SBEEA 2015; or
- (b) gives notice under section 50(3)(b) of that Act that the tenant wishes the Adjudicator to be appointed to arbitrate a dispute.

(2) The tied pub tenant must pay a fee of £200 to the Adjudicator at the time the referral is made or the notice is given.

(3) The Adjudicator (or a person appointed by the Adjudicator under section 50(4)(b) of SBEEA 2015) may order the tied pub tenant to pay the pub-owning business's costs in respect of the arbitration.

(4) The maximum amount the tied pub tenant may be ordered to pay is—

- (a) where paragraph (5) applies, the pub-owning business's full costs of the arbitration;
- (b) otherwise, £2,000.

(5) This paragraph applies where the Adjudicator (or a person appointed by the Adjudicator under section 50(4)(b) of SBEEA 2015) considers that—

- (a) the tied pub tenant's referral under section 48 of SBEEA 2015 or the tenant's notice under section 50(3)(b) of that Act was vexatious; or
- (b) the tied pub tenant's conduct in connection with the arbitration has resulted in an unreasonable increase in the costs of the arbitration.

Permitted maximum penalty

5.—(1) For the purposes of section 58 of SBEEA 2015, the permitted maximum is 1% of the pub-owning group's annual turnover.

(2) For this purpose the pub-owning group's annual turnover is to be determined as follows.

(3) Where the pub-owning business published accounts during the period of 12 months immediately preceding the date on which the relevant notice is given, the pub-owning group's annual turnover is—

- (a) where the accounts cover a period of exactly 12 months, the pub-owning group's applicable turnover for the period covered by those accounts;
 - (b) where the accounts cover a period of more than or less than 12 months, the pub-owning group's applicable turnover for the period covered by the accounts, divided by the number of months in that period, and multiplied by 12.
- (4) Where the pub-owning business did not publish accounts as mentioned in paragraph (3), the pub-owning group's annual turnover is—
- (a) where the pub-owning group has applicable turnover for each of the 12 months ending with the month preceding that in which the relevant notice is given, its applicable turnover for those 12 months;
 - (b) where the pub-owning group has applicable turnover for some but not all of those 12 months, its applicable turnover for those 12 months, divided by the number of those months for which the pub-owning group had applicable turnover, and multiplied by 12;
 - (c) where the pub-owning group has no applicable turnover for those 12 months, nil.
- (5) In this regulation—
- (a) “the relevant notice” means the notice under section 58(2) of SBEEA 2015;
 - (b) “the pub-owning group” means the pub-owning business and its group undertakings (if any).

Permitted maximum penalty: interpretation

6.—(1) For the purposes of regulation 5, the pub-owning group's “applicable turnover” for any period is the total of all income that is—

- (a) receivable in the period by the pub-owning business or any group undertaking of the pub-owning business; and
- (b) within paragraph (2),

after deduction of trade discounts, value added tax and other taxes based on that income.

(2) Income is within this paragraph if it is—

- (a) derived from the provision of products and services falling within the pub-owning group's ordinary activities in the United Kingdom;
- (b) rent or money payable in lieu of rent, in respect of land in the United Kingdom; or
- (c) gifts, grants, subsidies or membership fees receivable in the course of the pub-owning group's ordinary activities in the United Kingdom.

(3) Amounts are to be calculated for the purposes of this regulation in conformity with generally accepted accounting principles and practices.

(4) In this regulation, “the pub-owning group” has the same meaning as in regulation 5.

Review of regulations 3 and 4

7.—(1) The Secretary of State must, for each review period, carry out a review of regulations 3 and 4 of these Regulations.

(2) As soon as practicable after a review period, the Secretary of State must publish a report of the findings of the review for that period.

(3) The first review period is the period beginning on the date on which these Regulations come into force and ending 2 years after the following 31 March.

(4) Subsequent review periods are each successive period of 3 years after the first review period.

20th July 2016

Margot James
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the first to be made under sections 45(4), 51 and 58(6) of the Small Business, Enterprise and Employment Act 2015 (“SBEEA 2015”).

Regulation 3 of these Regulations makes provision for the fees which must be paid by a tied pub tenant or by a pub-owning business, where a dispute (an “MRO dispute”) is referred to the Adjudicator in connection with the offer of a market rent only option. Regulation 3 also makes provision for the costs which the Adjudicator may order the tenant to pay in respect of the arbitration.

Where a tenant refers a dispute (which is not an MRO dispute) to the Adjudicator in connection with the Pubs Code, section 51 of SBEEA 2015 requires the tenant to pay a fee to the Adjudicator. Regulation 4 of these Regulations sets that fee. Regulation 4 also makes provision for the costs which the Adjudicator may order the tenant to pay in respect of the arbitration.

Section 55 of SBEEA 2015 provides that where the Adjudicator is satisfied, as a result of an investigation, that a pub-owning business has failed to comply with the Pubs Code, or has failed to follow the Adjudicator’s recommendations, the Adjudicator may impose financial penalties on the business. Regulations 5 and 6 of these Regulations specify the maximum penalty which may be imposed by the Adjudicator on the pub-owning business.

Regulation 7 requires the Secretary of State to carry out a review of regulations 3 and 4.

An Impact Assessment has been prepared for these Regulations and is published at www.gov.uk/bis.

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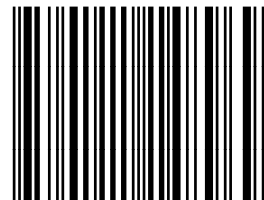
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