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DRAFT STATUTORY INSTRUMENTS

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**2016 No.**

**The Pubs Code etc. Regulations 2016**

**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.

**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<sup>(1)</sup> 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<sup>(2)</sup>;
  - “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<sup>(3)</sup> occupation of the premises concerned under an MRO-compliant tenancy or licence<sup>(4)</sup>;

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(1) 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.

(2) 2005 c.19.

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

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

“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(5) 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);

“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(6) 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.

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(5) 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.

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

### 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<sup>(7)</sup>;
- (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

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

- (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.—(1) 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<sup>(8)</sup>;
  - (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;
  - (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

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<sup>(8)</sup> Section 72(1) of SBEEA 2015 defines “service tie”.

- (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<sup>(9)</sup> 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 provider, provided that day is a business day; or, if not, the next business day after that day.
Document exchange	The second day after it was left with, delivered to or collected by the relevant service provider,

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<sup>(9)</sup> Section 69 of SBEEA 2015 defines “pub-owning business”.



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<i>Method of notifying, requesting, accepting etc.</i>	<i>Day on which notification, request, acceptance, receipt etc. is deemed to have occurred</i>
	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.

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(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<sup>(10)</sup>.

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<sup>(10)</sup> 1971 c.80.