
DRAFT STATUTORY INSTRUMENTS

2016 No.

The Pubs Code etc. Regulations 2016

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.