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DRAFT STATUTORY INSTRUMENTS

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**2016 No.**

**The Pubs Code etc. Regulations 2016**

**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<sup>(1)</sup>.

(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.

### **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

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

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(2).

(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.

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

### **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).

### **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<sup>(3)</sup> 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.

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