

## 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<sup>(1)</sup> 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;
  - (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.

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(1) 2003 c.17.

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(2).

#### **Breaches**

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

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

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.

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 sub-paragraph (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<sup>(3)</sup>).
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<sup>(4)</sup>.
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.

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(3) 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).

(4) 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).

### 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) 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.