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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 26th May 2016 or, if later, 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—
  - “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(1);
  - “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 recoverable amount” has the meaning given in regulation 40(4);
  - “MRO rent” means the rent or money payable in lieu of rent to be payable in respect of the tied pub tenant’s(2) occupation of the premises concerned under the proposed MRO-compliant tenancy or licence(3);
  - “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);

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(1) 2005 c.19.

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

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

- “period of response” has the meaning given in regulation 29(7) to (9);
- “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;
- “revised response” has the meaning given in regulation 33(3);
- “rent review date” has the meaning given in regulation 21(12);
- “SBEEA 2015” means the Small Business, Enterprise and Employment Act 2015;
- “significant increase”, in relation to the price at which a product or service which is subject to a product or service tie<sup>(4)</sup> is supplied to a tied pub tenant, has the meaning given in regulations 3 to 6;
- “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;
- “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;
- “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;
- “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 beer<sup>(5)</sup> supplied to a tied pub tenant takes place on the issue to the tied pub tenant of an invoice for beer (“the relevant invoice”) where the following two conditions are met.

- (2) The first condition is that—
- (a) one or more invoices for beer were issued to the tied pub tenant in the comparison period; and
  - (b) those invoices included at least one for beer of the same kind as beer invoiced in the current period.
- (3) The second condition is that—

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

where—

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

(5) Section 68(8) of SBEEA 2015 defines “beer”.

A is the average unit price of current period beer;  
B is the average unit price of comparison period beer;  
C is the level of the producer price index on the day the relevant invoice is issued;  
D is the level of the producer price index on the day 12 months before the relevant invoice is issued.

- (4) In this regulation—
- (a) “beer” means beer supplied under a product tie<sup>(6)</sup>;
  - (b) “current period beer” means all beer invoiced to the tied pub tenant in the current period, excluding any of a kind not invoiced to the tied pub tenant in the comparison period;
  - (c) “comparison period beer” means all beer invoiced to the tied pub tenant in the comparison period, excluding any of a kind not invoiced to the tied pub tenant in the current period;
  - (d) beer invoiced in a period is “of the same kind” as beer invoiced in another period if they are—
    - (i) of the same brand; and
    - (ii) sold in the same units;
  - (e) “the current period” means the period of 4 weeks ending with the day on which the relevant invoice is issued;
  - (f) “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;
  - (g) “invoice for beer” includes an invoice which covers (in addition to beer) products other than beer, or services; and references to beer being invoiced are to be read accordingly;
  - (h) references to prices are to prices exclusive of value added tax but inclusive of excise duty;
  - (i) “the producer price index” means the producer price index published by the Statistics Board<sup>(7)</sup> in respect of beer (including duty);
  - (j) references to the level of the producer price index on any day are to the level of that index, in the index most recently published before the end of that day, in respect of the most recent month covered by that publication.

#### **Significant increase in price: alcoholic drink other than beer**

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

- (2) The first condition is that—
- (a) one or more invoices for alcoholic drink were issued to the tied pub tenant in the comparison period; and
  - (b) those invoices included at least one for alcoholic drink of the same kind as alcoholic drink invoiced in the current period.

(3) The second condition is that—

$$\left( \frac{A - B}{B} \times 100 \right) > \left( \frac{C - D}{D} \times 100 \right) + 6$$

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<sup>(6)</sup> Section 72(1) of SBEEA 2015 defines “product tie”.

<sup>(7)</sup> 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.

where—

- A is the average unit price of current period alcoholic drink;
- B is the average unit price of comparison period alcoholic drink;
- C is the level of the producer price index on the day the relevant invoice is issued;
- D is the level of the producer price index on the day 12 months before the relevant invoice is issued.

(4) In this regulation—

- (a) “alcoholic drink” means alcoholic drink supplied under a product tie, other than beer;
- (b) “current period alcoholic drink” means all alcoholic drink invoiced to the tied pub tenant in the current period, excluding any of a kind not invoiced to the tied pub tenant in the comparison period;
- (c) “comparison period alcoholic drink” means all alcoholic drink invoiced to the tied pub tenant in the comparison period, excluding any of a kind not invoiced to the tied pub tenant in the current period;
- (d) alcoholic drink invoiced in a period is “of the same kind” as alcoholic drink invoiced in another period if they are—
  - (i) of the same category (see paragraph (5)); and
  - (ii) sold in the same units;
- (e) “the current period” means the period of 4 weeks ending with the day on which the relevant invoice is issued;
- (f) “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;
- (g) “invoice for alcoholic drink” includes an invoice which covers (in addition to alcoholic drink) products other than alcoholic drink, or services; and references to alcoholic drink being invoiced are to be read accordingly;
- (h) references to prices are to prices exclusive of value added tax but inclusive of excise duty;
- (i) “the producer price index” means the producer price index published by the Statistics Board in respect of alcoholic beverages (including duty);
- (j) references to the level of the producer price index on any day are to the level of that index, in the index most recently published before the end of that day, in respect of the most recent month covered by that publication.

(5) For the purposes of paragraph (4)(d)(i) the “categories” of alcoholic drink are—

- (a) blended whiskies;
- (b) single malt whiskies;
- (c) gin;
- (d) vodka;
- (e) brandy;
- (f) spirits not within any of sub-paragraphs (a) to (e);
- (g) red wine;
- (h) white wine;
- (i) rose wine;
- (j) cider<sup>(8)</sup>;

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<sup>(8)</sup> Section 68(8) of SBEEA 2015 defines “cider”.

- (k) alcoholic drink not within any of sub-paragraphs (a) to (j).

### **Significant increase in price: products other than alcoholic drink**

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

(2) The first condition is that—

- (a) one or more invoices for non-alcohol products were issued to the tied pub tenant in the comparison period; and
- (b) those invoices included at least one for non-alcohol products of the same kind as non-alcohol products invoiced in the current period.

(3) The second condition is that, for any of the non-alcohol products producer price indices (“the applicable producer price index”)—

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

where—

- A is the average unit price of current period non-alcohol products;
- B is the average unit price of comparison period non-alcohol products;
- C is the level of the applicable producer price index on the day the relevant invoice is issued;
- D is the level of the applicable producer price index on the day 12 months before the relevant invoice is issued.

(4) In this regulation—

- (a) “non-alcohol products” means products supplied under a product tie, other than alcoholic drink;
- (b) “current period non-alcohol products” means all non-alcohol products within the applicable producer price index invoiced to the tied pub tenant in the current period, excluding any of a kind not invoiced to the tied pub tenant in the comparison period;
- (c) “comparison period non-alcohol products” means all non-alcohol products within the applicable producer price index invoiced to the tied pub tenant in the comparison period, excluding any of a kind not invoiced to the tied pub tenant in the current period;
- (d) non-alcohol products invoiced in a period are “of the same kind” as non-alcohol products invoiced in another period if they are—
  - (i) of the same category (see paragraph (5)); and
  - (ii) sold in the same units;
- (e) “the current period” means the period of 4 weeks ending with the day on which the relevant invoice is issued;
- (f) “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;
- (g) “invoice for non-alcohol products” includes an invoice which covers (in addition to non-alcohol products) products or services other than non-alcohol products; and references to non-alcohol products being invoiced are to be read accordingly;
- (h) references to prices are to prices exclusive of value added tax;
- (i) “the non-alcohol products producer price indices” means—

- (i) the producer price index published by the Statistics Board in respect of food products;
  - (ii) the producer price index published by the Statistics Board in respect of soft drinks, mineral waters and other bottled waters;
  - (j) references to the level of a producer price index on any day are to the level of that index, in the index most recently published before the end of that day, in respect of the most recent month covered by that publication.
- (5) For the purposes of paragraph (4)(d)(i) the “categories” of non-alcohol products are—
- (a) food;
  - (b) non-alcoholic drinks.

### Significant increase in price: services

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

- (2) The first condition is that—
- (a) one or more invoices for services were issued to the tied pub tenant in the comparison period; and
  - (b) those invoices included at least one for services of the same kind as services invoiced in the current period.
- (3) The second condition is that—
- $$\left( \frac{A - B}{B} \times 100 \right) > \left( \frac{C - D}{D} \times 100 \right) + 20$$

where—

- A is the average unit price of current period services;
- B is the average unit price of comparison period services;
- C is the Consumer Price Index on the day the relevant invoice is issued;
- D is the Consumer Price Index on the day 12 months before the relevant invoice is issued.

- (4) In this regulation—
- (a) “services” means services supplied under a service tie<sup>(9)</sup>;
  - (b) “current period services” means all services invoiced to the tied pub tenant in the current period, excluding any of a kind not invoiced to the tied pub tenant in the comparison period;
  - (c) “comparison period services” means all services invoiced to the tied pub tenant in the comparison period, excluding any of a kind not invoiced to the tied pub tenant in the current period;
  - (d) services invoiced in a period are “of the same kind” as services invoiced in another period if they are—
    - (i) of the same category (see paragraph (5)); and
    - (ii) sold in the same units;
  - (e) “the current period” means the period of 4 weeks ending with the day on which the relevant invoice is issued;

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<sup>(9)</sup> Section 72(1) of SBEEA 2015 defines “service tie”.

- (f) “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;
  - (g) “invoice for services” includes an invoice which covers (in addition to services) products; and references to services being invoiced are to be read accordingly;
  - (h) references to prices are to prices exclusive of value added tax;
  - (i) “the consumer price index” means the general index of consumer prices (for all items) published by the Statistics Board;
  - (j) references to the level of the consumer price index on any day are to the level of that index, in the index most recently published before the end of that day, in respect of the most recent month covered by that publication.
- (5) For the purposes of paragraph (4)(d)(i) the “categories” of services are—
- (a) the hire of gaming machines;
  - (b) property and maintenance services (including maintenance of equipment);
  - (c) financial services (including insurance);
  - (d) business services not within any of sub-paragraphs (a) to (c).

### 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
  - (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>(10)</sup> on the tied pub; or

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<sup>(10)</sup> Section 69 of SBEEA 2015 defines “pub-owning business”.

- (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, 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.



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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>
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(11).