
DRAFT STATUTORY INSTRUMENTS

2016 No.

The Pubs Code etc. Regulations 2016

PART 2

Duties of pub-owning businesses in their dealings with their tied pub tenants: general

Pubs entry training

9.—(1) Before—

- (a) entering into a new agreement with a tied pub tenant; or
- (b) agreeing, with a tied pub tenant, the renewal of a tenancy to which Part 2 of the Landlord and Tenant Act 1954(1) applies,

a pub-owning business must advise the tied pub tenant to complete the appropriate pubs entry training.

(2) The pub-owning business's duty in paragraph (1) does not apply if the tied pub tenant meets at least one of the conditions in paragraph (3).

(3) The conditions are—

- (a) that the tied pub tenant operates at least one other tied pub, other than a pub which is occupied under a short agreement, on the day on which the new agreement or the renewal is proposed by the pub-owning business or the tied pub tenant;
- (b) that the tied pub tenant can demonstrate that the tenant has at least 3 years of relevant business management experience;
- (c) that the pub-owning business has, at any time, granted the tenant a tenancy or licence in relation to a tied pub, other than a tenancy or licence in connection with a short agreement.

(4) "Pubs entry training" means training which is designed to raise awareness of the matters involved in operating a pub and entering into product ties and other agreements with landlords(2).

A sustainable business plan

10.—(1) Before a pub-owning business—

- (a) enters into a new agreement with a tied pub tenant; or
- (b) agrees, with a tied pub tenant, the renewal of a tenancy to which Part 2 of the Landlord and Tenant Act 1954 does not apply,

(1) 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 (Licensed 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.

(2) Section 70(2) of SBEEA 2015 defines "landlord".

the pub-owning business must ensure that the tenant has a sustainable business plan.

- (2) A “sustainable business plan” is a business plan which—
 - (a) has been prepared following consideration of independent professional advice, such as business, legal, property and rental valuation advice;
 - (b) includes financial forecasts for the tenancy or licence period, including—
 - (i) estimates of income and expenditure;
 - (ii) a sensitivity analysis;
 - (iii) the impact of any indexation of rent or of other costs referred to in the new agreement or in the renewal; and
 - (c) contains a forecast of the income and net profit over the tenancy or licence period which, in the pub-owning business’s opinion, is reasonable for the tenant and realistic.
- (3) The pub-owning business must, before the tied pub tenant prepares the business plan—
 - (a) identify all reports which —
 - (i) are publicly available;
 - (ii) analyse the trading costs of tied pubs in the United Kingdom, or any area within it, and the costs of the tenancies and licences under which such pubs are occupied; and
 - (iii) provide relevant data against which the tenant can compare the performance of the tied pub for the purposes of preparing the business plan;
 - (b) advise the tenant to consult those reports; and
 - (c) provide to the tied pub tenant—
 - (i) the reports identified under sub-paragraph (a); or
 - (ii) information as to where, and how, the reports can be obtained.
- (4) The pub-owning business’s duty in paragraph (3)(c) does not apply in relation to a report which the tied pub tenant has confirmed to the pub-owning business the tenant has read.
- (5) A “sensitivity analysis” is an analysis of—
 - (a) the potential business performance of the tied pub in the case of an increase or decrease in business income; and
 - (b) the effect of that increase or decrease on the tied pub’s costs and profitability.
- (6) The “tenancy or licence period” means the period which—
 - (a) begins with the day on which the tenancy or licence first confers on the tied pub tenant the right to occupy; and
 - (b) ends with the earliest of the following days—
 - (i) the day five years after the day mentioned in sub-paragraph (a);
 - (ii) the last day on which the tenancy or licence confers on the tied pub tenant the right to occupy;
 - (iii) the rent review date.
- (7) Where a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies is renewed, the pub-owning business must—
 - (a) identify the reports mentioned in paragraph (3)(a), as if a sustainable business plan were being prepared;
 - (b) advise the tenant to consult those reports; and
 - (c) provide to the tied pub tenant, before the tenancy is renewed—

- (i) the reports identified under paragraph (3)(a); or
- (ii) information to the tenant as to where, and how, the reports can be obtained.

The required information

11.—(1) A pub-owning business must ensure that the tied pub tenant has received the information specified in Schedule 1 before the tenant considers the advice referred to in regulation 10(2)(a).

(2) The pub-owning business is not required to comply with paragraph (1) in respect of any information specified in Schedule 1 which—

- (a) has already been provided to the tied pub tenant by the pub-owning business in connection with the current tenancy or licence; and
- (b) has not changed materially since it was provided.

(3) The “current tenancy or licence” means the tenancy or licence in force at the time the tenant prepares the sustainable business plan.

Duty of pub-owning business where tenant intends to assign the tenancy

12.—(1) This regulation applies where the terms of a tenancy in relation to a tied pub permit the tied pub tenant to assign the tenancy to another person.

(2) Where a tied pub tenant notifies the pub-owning business that the tenant intends to assign the tenancy, the pub-owning business must, as soon as reasonably practicable—

- (a) explain to the tenant and the proposed assignee the implications of the assignment for both; and
- (b) provide the tenant with—
 - (i) information relating to any fees payable by the tenant in respect of the assignment;
 - (ii) information relating to any dilapidations which the pub-owning business requires to be remedied before, or as a condition of, the assignment; and
 - (iii) the information in Schedule 1 or, where that information has already been provided to the tenant under regulation 11(1), any information in that Schedule which has changed materially since it was last provided.

(3) Paragraphs (4) to (7) apply where the tenancy may not be assigned without the pub-owning business’s agreement.

(4) Before agreeing to an assignment, the pub-owning business must be satisfied—

- (a) that the proposed assignee has received the information which was provided to the tenant under regulation 11(1) or under paragraph (2)(b)(iii) of this regulation;
- (b) that the proposed assignee has been advised to complete pubs entry training; and
- (c) that the proposed assignee has been advised to seek independent advice, including advice from a qualified surveyor with professional experience relating to tied pubs.

(5) The pub-owning business’s duty at paragraph (4)(b) does not apply if the assignee meets at least one of the conditions in paragraph (6).

(6) The conditions are—

- (a) that the assignee operates at least one other tied pub other than a pub which is occupied under a short agreement on the day on which the notice mentioned in paragraph (2) is given;
- (b) that the assignee can demonstrate that the assignee has at least 3 years of relevant business management experience;

- (c) that the pub-owning business has, at any time, granted the assignee a tenancy or licence in relation to a tied pub, other than a tenancy or licence in connection with a short agreement.
- (7) Where the pub-owning business does not agree to the assignment, the pub-owning business must notify the tenant and the assignee as soon as reasonably practicable.
- (8) Paragraph (9) applies where—
 - (a) the tenancy may not be assigned without the pub-owning business’s agreement;
 - (b) the pub-owning business and the tied pub tenant have entered into an investment agreement; and
 - (c) the tied pub tenant proposes to assign the tenancy.
- (9) Before agreeing to the assignment, the pub-owning business must be satisfied that the assignee—
 - (a) has been notified, in writing, of the investment agreement and the effect of that agreement on the assignee’s right to request a rent assessment or an offer of a market rent only option⁽³⁾; and
 - (b) has received a copy of that agreement.

Premises

- 13.—**(1) Before entering into a new agreement with a tied pub tenant, a pub-owning business must advise the tenant to—
- (a) conduct a thorough inspection of the premises to which the tenancy or licence relates, including any part of the premises intended to be used as the tenant’s home; and
 - (b) obtain the advice of a qualified surveyor with professional experience relating to tied pubs.
- (2) Paragraph (3) applies where—
- (a) a tied pub tenant and a pub-owning business—
 - (i) enter into a new agreement; or
 - (ii) renew a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies; and
 - (b) before the renewal or before entering into the new agreement, the pub-owning business or the tied pub tenant agrees to carry out any maintenance, repair or improvement works to the premises.
- (3) As soon as reasonably practicable after the works are completed, the pub-owning business must update the Schedule of Condition, in the light of the works.
- (4) Where, under a tenancy or licence, a tied pub tenant is required to maintain or repair the premises, or any part of the premises, to which the tenancy or licence relates, paragraphs (5) and (6) apply.
- (5) Before entering into a new agreement or renewing a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies, the pub-owning business must take the Schedule of Condition into account—
- (a) during an assessment of any maintenance or repairs in respect of the premises; and
 - (b) before any obligations or liabilities in respect of the condition of the premises are agreed between the pub-owning business and the tied pub tenant.
- (6) The pub-owning business must ensure that the Schedule of Condition is updated and reviewed—
- (a) in accordance with the terms of the tenancy or licence; or

(3) Section 43(2) of SBEEA 2015 defines “market rent only option”.

- (b) where the tenancy or licence does not require such a review—
 - (i) following any significant alteration to the structure of the premises; and
 - (ii) at least 6 months before the end of the tenancy or licence.
- (7) A survey of the premises which is carried out by a pub-owning business for the purposes of determining the dilapidations to the premises must be carried out—
 - (a) in accordance with the terms of the tenancy or licence; and
 - (b) at least 6 months before the end of the tenancy or licence.
- (8) Paragraph (9) applies where a pub-owning business, or a person acting on its behalf, proposes to enter a tied pub for the purposes of —
 - (a) assessing repairs or maintenance required under the tenancy or licence;
 - (b) carrying out such repairs or maintenance; or
 - (c) assessing dilapidations in respect of the premises.
- (9) The pub-owning business, or the person acting on its behalf, must not, except in an emergency, enter the pub without giving the tied pub tenant reasonable notice.

Short agreements

- 14.—**(1) Before entering into a short agreement, the pub-owning business must provide the following information to the tied pub tenant—
- (a) the amount of rent, or money payable in lieu of rent, which is to be paid under the short agreement;
 - (b) the information specified in paragraphs 12 to 17, 19, 20, 28, 32 and 34 of Schedule 1;
 - (c) the arrangements for the payment of utility bills.
- (2) The pub-owning business must advise the tenant to complete pubs entry training before entering into a short agreement unless the tenant meets at least one of the conditions in paragraph (3).
- (3) The conditions are—
- (a) that, on the day on which the short agreement is proposed, the tied pub tenant operates at least one other tied pub other than a tied pub occupied under a short agreement;
 - (b) that the tied pub tenant can demonstrate that the tenant has at least 3 years of relevant business management experience;
 - (c) that the pub-owning business has, at any time, granted the tenant a tenancy or licence in relation to a tied pub, other than a tenancy or licence in connection with another short agreement.