
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

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,

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.