



Small Business, Enterprise and Employment Act 2015

2015 CHAPTER 26

PART 4

THE PUBS CODE ADJUDICATOR AND THE PUBS CODE

Pubs Code

42 Pubs Code

- (1) The Secretary of State must, before the end of the period of one year beginning with the day on which this section comes into force, make regulations about practices and procedures to be followed by pub-owning businesses in their dealings with their tied pub tenants.
- (2) In this Part the regulations are referred to as “the Pubs Code”.
- (3) The Secretary of State must seek to ensure that the Pubs Code is consistent with—
 - (a) the principle of fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants;
 - (b) the principle that tied pub tenants should not be worse off than they would be if they were not subject to any product or service tie.
- (4) The Pubs Code may, in particular—
 - (a) contain requirements as to the provision of information by pub-owning businesses to their tied pub tenants;
 - (b) require pub-owning businesses, in specified circumstances, to provide the following assessments in relation to their tied pub tenants—
 - (i) rent assessments, or
 - (ii) assessments of money payable by the tenant in lieu of rent;
 - (c) make provision about the information that such assessments must contain and how they are to be calculated and presented;

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- (d) specify that such assessments must be conducted in accordance with provisions of documents specified in the Pubs Code;
 - (e) where any document is specified for the purposes of paragraph (d), refer to the provisions of the document as amended from time to time;
 - (f) impose other obligations on pub-owning businesses in relation to their tied pub tenants.
- (5) The Pubs Code may require pub-owning businesses to provide parallel rent assessments in relation to their tied pub tenants in specified circumstances, and in connection with such provision may —
- (a) confer on the Adjudicator functions in relation to parallel rent assessments,
 - (b) require the payment of a fee by tied pub tenants to the Adjudicator in connection with the exercise of those functions, and
 - (c) make provision corresponding to that mentioned in subsection (4)(c), (d) and (e).

43 Pubs Code: market rent only option

- (1) The Pubs Code must require pub-owning businesses to offer their tied pub tenants falling within section 70(1)(a) a market rent only option in specified circumstances.
- (2) A “market rent only option” means the option for the tied pub tenant—
- (a) to occupy the tied pub under a tenancy or licence which is MRO-compliant, and
 - (b) to pay in respect of that occupation—
 - (i) such rent as may be agreed between the pub-owning business and the tied pub tenant in accordance with the MRO procedure (see section 44), or
 - (ii) failing such agreement, the market rent.
- (3) The Pubs Code may specify—
- (a) circumstances in which a market rent only option must or may be an option to occupy under a tenancy;
 - (b) circumstances in which a market rent only option must or may be an option to occupy under a licence.
- (4) A tenancy or licence is MRO-compliant if—
- (a) taken together with any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the tenancy or licence it—
 - (i) contains such terms and conditions as may be required by virtue of subsection (5)(a),
 - (ii) does not contain any product or service tie other than one in respect of insurance in connection with the tied pub, and
 - (iii) does not contain any unreasonable terms or conditions, and
 - (b) it is not a tenancy at will.
- (5) The Pubs Code may specify descriptions of terms and conditions—
- (a) which are required to be contained in a tenancy or licence for it to be MRO-compliant;

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- (b) which are to be regarded as reasonable or unreasonable for the purposes of subsection (4).
- (6) Provision made under subsection (1) must include provision requiring a pub-owning business to offer a tied pub tenant a market rent only option—
 - (a) in connection with the renewal of any of the pub arrangements;
 - (b) in connection with a rent assessment or assessment of money payable by the tenant in lieu of rent;
 - (c) in connection with a significant increase in the price at which any product or service which is subject to a product or service tie is supplied to the tied pub tenant where the increase was not reasonably foreseeable—
 - (i) when the tenancy or licence was granted, or
 - (ii) if there has been an assessment of a kind mentioned in paragraph (b), when the last assessment was concluded;
 - (d) after a trigger event has occurred.
- (7) The Pubs Code may specify what “renewal” means in relation to a tenancy or a licence for the purposes of subsection (6).
- (8) In subsection (6) “pub arrangements”, in relation to a tied pub, means—
 - (a) the tenancy or licence under which the tied pub is occupied, and
 - (b) any other contractual agreement which contains an obligation by virtue of which condition D in section 68 is met in relation to the premises.
- (9) In this Part a “trigger event”, in relation to a tied pub tenant, means an event which—
 - (a) is beyond the control of the tied pub tenant,
 - (b) was not reasonably foreseeable as mentioned in subsection (6)(c),
 - (c) has a significant impact on the level of trade that could reasonably be expected to be achieved at the tied pub, and
 - (d) is of a description specified in the Pubs Code.
- (10) In this Part “market rent”, in relation to the occupation of particular premises under a tenancy or licence which is MRO-compliant, means the estimated rent which it would be reasonable to pay in respect of that occupation on the following assumptions—
 - (a) that the tenancy or licence concerned is entered into—
 - (i) on the date on which the determination of the estimated rent is made,
 - (ii) in an arm's length transaction,
 - (iii) after proper marketing, and
 - (iv) between parties each of whom has acted knowledgeably, prudently and willingly, and
 - (b) that condition B in section 68 continues to be met.

44 Market rent only option: procedure

- (1) The Pubs Code may—
 - (a) make provision about the procedure to be followed in connection with an offer of a market rent only option (referred to in this Part as “the MRO procedure”);
 - (b) confer functions on the Adjudicator in connection with that procedure.
- (2) Provision made under subsection (1) may, in particular—

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- (a) make provision for the tied pub tenant to give notice to the pub-owning business that the tenant—
 - (i) considers that circumstances are such that the pub-owning business is required to offer the tenant a market rent only option, and
 - (ii) wishes to receive such an offer;
 - (b) specify a reasonable period (“the negotiation period”) during which the pub-owning business and the tied pub tenant may seek to agree the rent to be payable in respect of the tied pub tenant's occupation of the premises concerned under the proposed MRO-compliant tenancy or licence;
 - (c) require the appointment of a person (referred to in this Part as an “independent assessor”) to determine the market rent of the premises concerned in a case where, at the end of the negotiation period, the pub-owning business and the tied pub tenant have not reached agreement as mentioned in paragraph (b);
 - (d) require that appointment to be made by the pub-owning business and the tied pub tenant acting jointly or (where they cannot agree on a person to appoint) by the Adjudicator;
 - (e) require the Adjudicator to set criteria which a person must satisfy in order to be appointed as an independent assessor;
 - (f) require that the market rent must be determined by the independent assessor within a specified reasonable period;
 - (g) specify that the determination of the market rent by the independent assessor must be conducted in accordance with provisions of documents specified in the Pubs Code;
 - (h) where any document is specified for the purposes of paragraph (g), refer to the provisions of the document as amended from time to time.
- (3) The Pubs Code may make provision for—
- (a) the tenancy or licence under which the tied pub is occupied, and
 - (b) any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the tenancy or licence,
- as they are in force when a notice is given by virtue of subsection (2)(a), to continue to have effect until such time as the MRO procedure has come to an end (regardless of whether any of the agreements would or could otherwise cease to have effect before that time).
- (4) The Pubs Code may, for the purposes of subsection (3), specify the circumstances in which the MRO procedure is to be treated as having come to an end.

VALID FROM 06/04/2016

45 Market rent only option: disputes

- (1) The Secretary of State may by regulations confer functions on the Adjudicator in connection with the resolution of disputes relating to the offer of a market rent only option.
- (2) The regulations may, in particular, make provision concerning the resolution of disputes about whether—
 - (a) circumstances are such that a pub-owning business is required to offer a tied pub tenant a market rent only option;

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- (b) a proposed tenancy or licence is MRO-compliant;
 - (c) a determination of the market rent of a tenancy or licence made by an independent assessor has been made in accordance with the Pubs Code;
 - (d) any other requirement of the MRO procedure has been complied with.
- (3) The regulations may, in particular, confer on the Adjudicator the function of determining the market rent of a tenancy or licence in such circumstances as may be specified in the regulations.
- (4) Nothing in sections 48 to 52 applies in relation to provision made by virtue of section 43 or 44 but the regulations may include provision which is similar to that contained in or made under those sections.

PROSPECTIVE

46 Review of Pubs Code

- (1) The Secretary of State must review the operation of the Pubs Code for each review period.
- (2) The first review period is the period beginning on the date on which the Pubs Code comes into force and ending 2 years after the following 31 March.
- (3) Subsequent review periods are each successive period of 3 years after the first review period.
- (4) As soon as practicable after a review period, the Secretary of State must—
 - (a) publish a report of the findings of the review for that period, and
 - (b) lay a copy of the report before Parliament.
- (5) In particular, the report must set out—
 - (a) the extent to which, in the Secretary of State's opinion, the Pubs Code is consistent with the principles set out in section 42(3), and
 - (b) any revisions of the Pubs Code which, in the Secretary of State's opinion, would enable the Pubs Code to reflect more fully those principles.

VALID FROM 06/04/2016

47 Inconsistency with Pubs Code etc

- (1) The Secretary of State may by regulations make provision about terms of a tenancy or other agreement between a pub-owning business and a tied pub tenant—
 - (a) which are inconsistent with the Pubs Code,
 - (b) which purport to penalise the tenant for requiring the business to act, or not act, in accordance with any provision of the Pubs Code with which the business is bound to comply,
 - (c) which purport to provide that a rent assessment or assessment of money payable by the tenant in lieu of rent in relation to the tied pub—
 - (i) may be initiated only by the business, or

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- (ii) may only determine that the rent or money payable in lieu of rent is to be increased.
- (2) The regulations may include provision about the effect of a term of a tenancy or other agreement being void or unenforceable as a result of the regulations.
- (3) Regulations under subsection (1) may make provision about terms of tenancies or other agreements entered into before the date on which the regulations come into force.
- (4) A term of any agreement between a pub-owning business and a tied pub tenant is void to the extent that it purports to—
- (a) prevent the tenant from referring a dispute to the Adjudicator for arbitration in accordance with regulations under section 45 or in accordance with section 48, or
 - (b) penalise the tenant for making such a referral.
- (5) A term of an arbitration agreement between a pub-owning business and a tied pub tenant is unenforceable to the extent that it is inconsistent with—
- (a) regulations under section 45,
 - (b) section 50,
 - (c) section 51, or
 - (d) regulations under section 51(7).
- (6) Subsections (4) and (5) apply to agreements entered into before the date on which those subsections come into force, as well as those entered into on or after that date.
- (7) The Secretary of State may by regulations make provision about the effect of a term of an agreement being void or unenforceable as a result of subsection (4) or (5).

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