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DRAFT STATUTORY INSTRUMENTS

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**2016 No.**

**The Pubs Code etc. Regulations 2016**

**PART 6**

Market rent only option: procedure to be followed in connection with an offer

**Existing arrangements continue to have effect until the end of the MRO procedure**

**28.**—(1) When a tenant gives an MRO notice—

- (a) the tenancy or licence under which the tied pub is occupied; and
- (b) any other contractual agreement entered into between the tied pub tenant and the pub-owning business in connection with the tenancy or licence,

continue to have effect, as they have effect when the notice is given, until such time as the MRO procedure has come to an end under regulation 39.

(2) Paragraph (1) does not apply when the tied pub tenant of a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies gives an MRO notice that the event specified in regulation 26 has occurred.

**Effect of tenant's notice**

**29.**—(1) This regulation applies where a pub-owning business has received an MRO notice.

(2) The pub-owning business must send a written acknowledgement to the tied pub tenant as soon as reasonably practicable.

(3) Where the pub-owning business agrees with the tied pub tenant's opinion under regulation 23(3)(e), the pub-owning business must send the tenant—

- (a) a statement confirming its agreement;
- (b) where the MRO notice relates to a tenancy, a proposed tenancy which is MRO-compliant;
- (c) where the MRO notice relates to a licence, a proposed licence which is MRO-compliant; and
- (d) a proposed MRO rent.

(4) Where the pub-owning business disagrees with the tied pub tenant's opinion under regulation 23(3)(e), it must send the tenant—

- (a) a statement confirming its disagreement; and
- (b) its reasons for disagreeing.

(5) A response under paragraph (3) or (4) is a “full response”.

(6) The pub-owning business must send a full response within the period of response.

(7) The “period of response” is, subject to paragraphs (8) and (9), the period of 28 days which begins with the day on which the pub-owning business receives an MRO notice.

(8) Where—

- (a) the tenant gives an MRO notice that the event specified in regulation 26 has occurred;
- (b) the event is a renewal by virtue of regulation 26(2)(a); and
- (c) the pub-owning business—
  - (i) opposes the tenant’s application for a new tenancy under section 24(1) of the Landlord and Tenant Act 1954; or
  - (ii) applies to the court under section 29(2) of that Act, for an order for the termination of the tenancy,

the “period of response” is the period of 28 days which begins with the day on which the court makes an order for the grant of a new tenancy.

(9) Where the tenant gives an MRO notice that the event specified in regulation 26 has occurred, and the event is a renewal by virtue of regulation 26(2)(b), the period of response is the period of 28 days which begins —

- (a) at the end of the period of two months after the day on which the tenant makes a request for a new tenancy under section 26 of the Landlord and Tenant Act 1954; or
- (b) where the pub-owning business opposes the tenant’s application for a new tenancy under section 24(1) of that Act, or applies to the court under section 29(2) of that Act, on the day on which the court makes an order for the grant of a new tenancy.

### **Terms and conditions required in a tenancy which is MRO-compliant**

**30.**—(1) This regulation applies where—

- (a) a tied pub tenant is subject to a tenancy granted by the pub-owning business (the “existing tenancy”);
- (b) the tenant gives an MRO notice;
- (c) the pub-owning business provides a full response or a revised response; and
- (d) Part 2 of the Landlord and Tenant Act 1954 applies to the existing tenancy.

(2) The tenancy which is sent by the pub-owning business under regulation 29(3)(b) or 33(2) (“the proposed MRO tenancy”) is MRO-compliant only if Part 2 of the Landlord and Tenant Act 1954 applies to the proposed MRO tenancy.

(3) Where the MRO notice states that the event specified in regulation 24, 25 or 27 has occurred, the tenancy is MRO-compliant only if its term is for a period which is at least as long as the remaining term of the existing tenancy.

### **Reasonable terms and conditions**

**31.**—(1) Paragraph (2) applies where—

- (a) a tied pub tenant is subject to a tenancy granted by the pub-owning business; and
- (b) the tenant gives an MRO notice.

(2) The terms and conditions of the proposed MRO-compliant tenancy sent under regulation 29(3)(b) or 33(2) are to be regarded as unreasonable for the purposes of section 43(4) of SBEEA 2015 (tenancy or licence which is MRO-compliant) if they—

- (a) insert into the tenancy a break clause which is exercisable only by the pub-owning business;
- (b) impose a service tie in respect of insurance other than buildings insurance in connection with the premises to which the tenancy relates; or

- (c) are terms which are not common terms in agreements between landlords and pub tenants who are not subject to product or service ties.
- (3) Where—
  - (a) a tied pub tenant is subject to a licence granted by the pub-owning business; and
  - (b) an MRO notice is given,

the terms and conditions of the proposed MRO-compliant licence granted by the pub-owning business under regulation 29(3)(c) or 33(2) are to be regarded as unreasonable for the purposes of section 43(4) of SBEEA 2015 if they impose a service tie in respect of insurance other than buildings insurance in connection with the premises to which the licence relates.

#### **Failure to acknowledge the tenant’s notice, provide a full response etc.**

**32.**—(1) This regulation applies where a pub-owning business has received an MRO notice.

- (2) Where—
  - (a) the pub-owning business does not send a full response under regulation 29(3) or (4) within the period of response;
  - (b) the tied pub tenant considers that the pub-owning business’s full response does not comply with other requirements of regulation 29; or
  - (c) the tied pub tenant disagrees with the pub-owning business’s statement under regulation 29(4)(a),

the tenant or the pub-owning business may refer the matter to the Adjudicator<sup>(1)</sup>.

(3) Where the tied pub tenant or the pub-owning business intends to make a referral under paragraph (2), the tenant and the pub-owning business must notify each other, in writing, of their intention to do so before the referral is made.

(4) Where the matter is referred to the Adjudicator in the circumstances described in paragraph (2) (a) to (c), the referral must be made within the period of 14 days beginning with the day after the end of the period of response.

#### **MRO procedure where a matter is referred to the Adjudicator in connection with the full response**

- 33.**—(1) Where—
  - (a) a matter is referred to the Adjudicator under regulation 32(2)(b) or (c); and
  - (b) the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b)) rules that no failure has occurred in connection with the full response,

the full response provided by the pub-owning business under regulation 29(3) or (4) is deemed to have been received by the tied pub tenant on the day of the Adjudicator’s ruling.

- (2) Where—
  - (a) a matter is referred to the Adjudicator under regulation 32(2)(a) to (c); and
  - (b) the Adjudicator rules that the pub-owning business must provide a revised response to the tied pub tenant,

the pub-owning business must provide that response within the period of 21 days beginning with the day of the Adjudicator’s ruling or by such a day as may be specified in the Adjudicator’s ruling.

(3) A “revised response” is a response which includes the information mentioned in regulation 29(3)(a) to (d).

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(1) Section 72(1) of SBEEA 2015 defines “the Adjudicator”.

### The negotiation period

- 34.**—(1) This regulation applies where—
- (a) the pub-owning business has provided the tenant with—
    - (i) a full response under regulation 29(3); or
    - (ii) a revised response under regulation 33(2); and
  - (b) the tied pub tenant continues to wish to pursue a market rent only option.
- (2) The tied pub tenant and the pub-owning business must seek to agree—
- (a) an MRO-compliant tenancy or licence; and
  - (b) the rent payable under that tenancy or licence.
- (3) If, by the end of the negotiation period<sup>(2)</sup>, the tied pub tenant has not communicated to the pub-owning business, in writing, a decision to accept or reject a proposal as to the matters referred to at paragraph (2)(a) and (b)—
- (a) the offer lapses; and
  - (b) the tied pub tenant may not refer the MRO rent to the independent assessor<sup>(3)</sup> under regulation 35(3).
- (4) A tied pub tenant may notify the pub-owning business, in writing, of the tenant’s intention to terminate the negotiation at any time during the negotiation period.
- (5) The negotiation period is the period of 56 days beginning with the day on which the tied pub tenant receives—
- (a) a full response under regulation 29(3); or
  - (b) if later, a revised response under regulation 33(2).

### Failure to agree

- 35.**—(1) Where—
- (a) the pub-owning business sends a subsequent proposed tenancy or licence to the tied pub tenant during the negotiation period; and
  - (b) the tenant considers that the tenancy or licence is not MRO-compliant,
- the tenant may refer the matter to the Adjudicator within the period of 14 days beginning with the day after the day on which the subsequent proposed tenancy is received.
- (2) A “subsequent proposed tenancy or licence” means a tenancy or licence which the pub-owning business has offered to the tenant as an MRO-compliant tenancy or licence during the negotiation period.
- (3) A tied pub tenant may refer the MRO rent to an independent assessor by sending a notice to the pub-owning business, in writing, of the tenant’s intention to do so within the period—
- (a) beginning with the day 28 days after the day on which the negotiation period begins; and
  - (b) ending with the day 7 days after the day on which that period ends.

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(2) Section 44(2)(b) of SBEEA 2015 defines “negotiation period”.

(3) Section 72(1) of SBEEA 2015 defines “independent assessor”.