STATUTORY INSTRUMENTS

2016 No. 802

ENTERPRISE, ENGLAND AND WALES

The Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016

Made - - - - 20th July 2016

Coming into force in accordance with regulation 1(b)

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 45(4), 51(2), (3)(a) and (7), 58(6) and 161(2)(a) to (d) of the Small Business, Enterprise and Employment Act 2015(**1**).

In accordance with sections 73(1) and 161(4) of the Small Business, Enterprise and Employment Act 2015, a draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1. These Regulations—

(a) may be cited as the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016;

(b) come into force on the day after the day on which they are made; and

(c) extend to England and Wales.

Interpretation

2. In these Regulations—

"SBEEA 2015" means the Small Business, Enterprise and Employment Act 2015;

"MRO dispute" means a dispute relating to the offer of a market rent only option(**2**).

MRO disputes: fees, costs etc.

3.—(1) This regulation applies where—

(a) a tied pub tenant(**3**) or a pub-owning business(**4**) refers an MRO dispute to the Adjudicator(**5**) ("the referral") under the Pubs Code etc. Regulations 2016(**6**); or

(**1**) 2015 c. 26.
(**2**) Section 43(2) of SBEEA 2015 defines "market rent only option".
(**3**) Section 70(1) of SBEEA 2015 defines "tied pub tenant".

(b) a tied pub tenant gives notice ("the notice") under regulation 60(2) of those Regulations that the tenant wishes the Adjudicator to be appointed to arbitrate an MRO dispute.

(2) The person who makes the referral or gives the notice must pay a fee of £200 to the Adjudicator at the time the referral is made or the notice is given.

(3) The pub-owning business must pay the reasonable fees and expenses of the Adjudicator (or of the person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b) of the Pubs Code etc. Regulations 2016) in respect of the arbitration, except where—

(a) the tenant made the referral or gave the notice; and

(b) the Adjudicator (or the person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b) of the Pubs Code etc. Regulations 2016) concludes that the referral or notice was vexatious.

(4) The Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b) of the Pubs Code etc. Regulations 2016) may order the tied pub tenant to pay an amount in respect of the pub-owning business's costs relating to the arbitration.

(5) The maximum amount the tied pub tenant may be ordered to pay is—

(a) where paragraph (6) applies, the pub-owning business's full costs of the arbitration;

(b) otherwise, £2,000.

(6) This paragraph applies where the Adjudicator (or a person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b) of the Pubs Code etc. Regulations 2016) considers that—

(a) the referral or the notice was vexatious; or

(b) the tied pub tenant's conduct in connection with the arbitration has resulted in an unreasonable increase in the costs of the arbitration.

Disputes which are not MRO disputes: fees and costs of arbitration

4.—(1) This regulation applies where a tied pub tenant—

(a) refers a dispute to the Adjudicator under section 48 of SBEEA 2015; or

(b) gives notice under section 50(3)(b) of that Act that the tenant wishes the Adjudicator to be appointed to arbitrate a dispute.

(2) The tied pub tenant must pay a fee of £200 to the Adjudicator at the time the referral is made or the notice is given.

(3) The Adjudicator (or a person appointed by the Adjudicator under section 50(4)(b) of SBEEA 2015) may order the tied pub tenant to pay the pub-owning business's costs in respect of the arbitration.

(4) The maximum amount the tied pub tenant may be ordered to pay is—

(a) where paragraph (5) applies, the pub-owning business's full costs of the arbitration;

(b) otherwise, £2,000.

(5) This paragraph applies where the Adjudicator (or a person appointed by the Adjudicator under section 50(4)(b) of SBEEA 2015) considers that—

(a) the tied pub tenant's referral under section 48 of SBEEA 2015 or the tenant's notice under section 50(3)(b) of that Act was vexatious; or

(b) the tied pub tenant's conduct in connection with the arbitration has resulted in an unreasonable increase in the costs of the arbitration.

(**4**) Section 69 of SBEEA 2015 defines "pub-owning business".
(**5**) Section 72(1) of SBEEA 2015 defines "the Adjudicator".
(**6**) S.I. 2016/790