STATUTORY INSTRUMENTS

2016 No. 790

ENTERPRISE, ENGLAND AND WALES

The Pubs Code etc. 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 42(1) and (4), 43(1), (3) and (5) to (9), 44, 45, 47(1) to (3), 48(3), 69(6) and (8)(b), 71(1)(a) and (2) and 161(2) 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.

PART 1

General

Citation, commencement and extent

1. These Regulations—

(a) may be cited as the Pubs Code etc. Regulations 2016;

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

(c) extend to England and Wales.

General interpretation

2.—(1) In these Regulations—

"annual percentage change in the consumer price index" means the annual change in the general index of consumer prices (for all items), as published by the Statistics Board(**2**) with the identifying code D7G7;

"business development manager" has the meaning given in regulation 41(6);

"commencement date" means the date on which these Regulations come into force;

(**1**) 2015 c.26.

(**2**) The Statistics Board is established by section 1 of the Statistics and Registration Service Act 2007 (c.18). In Welsh, the Statistics Board is known as Y Bwrdd Ystadegau.

"compliance officer" means a person who is appointed under regulation 42(1);

"fixed share of turnover" has the meaning given in regulation 55(4);

"full response" has the meaning given in regulation 29(5);

"gaming machine" has the meaning given in section 235 of the Gambling Act 2005(**3**);

"initial or revised rent" has the meaning given in regulation 16(1)(a);

"insurance charge" has the meaning given in regulation 46(1);

"investment agreement" has the meaning given in regulation 56(3);

"MRO notice" has the meaning given in regulation 23(1);

"MRO rent" means the rent or money payable in lieu of rent payable in respect of the tied pub tenant's(**4**) occupation of the premises concerned under an MRO-compliant tenancy or licence(**5**);

"new agreement" means a new tenancy of, or a new licence to occupy, premises which are, or are expected to be, a tied pub but does not include a short agreement or the renewal of a tenancy or licence;

"new rent" has the meaning given in regulation 20(1)(a);

"period of response" has the meaning given in regulation 29(7) to (9);

"protected 1954 Act tenancy" means a tenancy—

(a) to which Part 2 of the Landlord and Tenant Act 1954(**6**) applies, and

(b) which is not a tenancy in relation to which the provisions of sections 24 to 28 of that Act have been excluded by virtue of section 38A(1) of that Act;

"pub franchise agreement" has the meaning given in regulation 55(2);

"pubs entry training" has the meaning given in regulation 9(4);

"relevant share of turnover" has the meaning given in regulation 55(5);

"rent proposal" means a proposal made in accordance with Part 3;

"rent assessment proposal" means a proposal made in accordance with Part 4;

"rent review date" has the meaning given in regulation 21(12);

"revised response" has the meaning given in regulation 33(3);

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

"Schedule of Condition" means the provisions in a tenancy or licence which specify the condition of the premises to which the tenancy or licence relates;

"short agreement" means—

(a) a tenancy at will which entitles a tied pub tenant to occupy a tied pub; or

(b) any other contractual agreement entitling a tied pub tenant to occupy a tied pub for no more than 12 months;

(**3**) 2005 c.19.
(**4**) Section 70(1) of SBEEA 2015 defines "tied pub tenant".
(**5**) Section 43 of SBEEA 2015 defines "MRO-compliant". Section 70(2) of SBEEA 2015 defines "tenancy" and "licence".
(**6**) 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 (Licenced 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.

"significant increase", in relation to the price at which a product or service which is subject to a product or service tie(**7**) is supplied to a tied pub tenant, has the meaning given in regulations 3 to 6;

"subsequent proposed tenancy or licence" has the meaning given in regulation 35(2);

"the RICS" means the Royal Institution of Chartered Surveyors;

"the RICS guidance" means guidance issued by the RICS, as amended from time to time;

"trigger event" has the meaning given by section 43(9) of SBEEA 2015 and regulation 7.

(2) For the purposes of these Regulations, a tied pub tenant receives notification of a significant increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant when the tied pub tenant receives the invoice the issue of which constitutes such an increase.

Significant increase in price: beer

3.—(1) For the purposes of these Regulations, a "significant increase" in the price of a beer product ("the relevant product") supplied to a tied pub tenant takes place on the issue to the tied pub tenant of an invoice for that product ("the relevant invoice") where—

(a) the relevant product has previously been supplied to the tied pub tenant,

(b) the unit price of that product on the relevant invoice is higher than its unit price on the most recent previous invoice for that product issued to the tied pub tenant, and

(c) the following two conditions are met.

(2) The first condition is that one or more invoices for the relevant product were issued to the tied pub tenant in the comparison period.

(3) The second condition is that—

$$\left(\frac{A-B}{B}\times 100\right) > C+3$$

where—

A is the amount that comparison period beer would have cost the tied pub tenant if it had been invoiced at current period prices;

B is the amount that comparison period beer cost the tied pub tenant at the prices actually invoiced;

C is the relevant annual percentage change in the consumer price index or, where that is negative, zero.

(4) In this regulation—

(a) "beer product" means a product which is beer and which is supplied under a product tie(**8**);

(b) "comparison period beer" means all beer products invoiced to the tied pub tenant in the comparison period, in the quantities so invoiced, but excluding any beer product for which no invoice was issued to the tied pub tenant in the current period;

(c) "current period" means the period of 4 weeks ending with the day on which the relevant invoice is issued;

(d) "the comparison period" means the period of 4 weeks ending with the day 12 months before the day on which the relevant invoice is issued;

(**7**) Section 72(1) of SBEEA 2015 defines "product or service tie".
(**8**) Section 72(1) of SBEEA 2015 defines "product tie".

(e) "current period price", in relation to a beer product, means the price of that product on the last invoice for that product issued during the current period;

(f) "invoice for a beer product" includes an invoice which covers (in addition to beer products) products other than beer products, or services; and references to a beer product being invoiced are to be read accordingly;

(g) "the relevant annual percentage change in the consumer price index" means the annual percentage change in the consumer price index most recently published before the day on which the relevant invoice is issued, in respect of the most recent month covered by that publication.

(5) The prices to be used in determining the unit price of the relevant product for the purposes of paragraph (1), and in calculating A and B for the purposes of paragraph (3), are prices—

(a) excluding value added tax and excise duty; and

(b) disregarding the effect of any discounts which the pub-owning business was not contractually required to give to the tied pub tenant.

(6) For the purposes of this regulation, beer products invoiced to the tied pub tenant are different beer products if—

(a) they have different names on the invoice or invoices in question, or

(b) they are invoiced in different units (for example, in units of different size or capacity).

Significant increase in price: alcoholic drink other than beer

4. For the purposes of these Regulations, a "significant increase" in the price of an alcoholic drink product ("the relevant product") supplied to a tied pub tenant takes place on the issue to the tied pub tenant of an invoice for that product ("the relevant invoice") where—

(a) the relevant product has previously been supplied to the tied pub tenant,

(b) the unit price of that product on the relevant invoice is higher than its unit price on the most recent previous invoice for that product issued to the tied pub tenant, and

(c) the following two conditions are met.

(2) The first condition is that one or more invoices for the relevant product were issued to the tied pub tenant in the comparison period.

(3) The second condition is that—

$$\left(\frac{A-B}{B}\times 100\right) > C+8$$

where—

A is the amount that comparison period alcoholic drink would have cost the tied pub tenant if it had been invoiced at current period prices;

B is the amount that comparison period alcoholic drink cost the tied pub tenant at the prices actually invoiced;

C is the relevant annual percentage change in the consumer price index or, where that is negative, zero.

(4) In this regulation—

(a) "alcoholic drink product" means a product which—

(i) is an alcoholic drink other than beer, and

(ii) is supplied under a product tie;

(b) "comparison period alcoholic drink" means all alcoholic drink products invoiced to the tied pub tenant in the comparison period, in the quantities so invoiced, but excluding any alcoholic drink product for which no invoice was issued to the tied pub tenant in the current period;

(c) "current period" means the period of 4 weeks ending with the day on which the relevant invoice is issued;

(d) "the comparison period" means the period of 4 weeks ending with the day 12 months before the day on which the relevant invoice is issued;

(e) "current period price", in relation to an alcoholic drink product, means the price of that product on the last invoice for that product issued during the current period;

(f) "invoice for an alcoholic drink product" includes an invoice which covers (in addition to alcoholic drink products) products other than alcoholic drink products, or services; and references to an alcoholic drink product being invoiced are to be read accordingly;

(g) "the relevant annual percentage change in the consumer price index" means the annual percentage change in the consumer price index most recently published before the day on which the relevant invoice is issued, in respect of the most recent month covered by that publication.

(5) The prices to be used in determining the unit price of the relevant product for the purposes of paragraph (1), and in calculating A and B for the purposes of paragraph (3), are prices—

(a) excluding value added tax and excise duty; and

(b) disregarding the effect of any discounts which the pub-owning business was not contractually required to give to the tied pub tenant.

(6) For the purposes of this regulation, alcoholic drink products invoiced to the tied pub tenant are different alcoholic drink products if—

(a) they have different names on the invoice or invoices in question, or

(b) they are invoiced in different units (for example, in units of different size or capacity).

Significant increase in price: products other than alcoholic drink

5.—(1) For the purposes of these Regulations, a "significant increase" in the price of a non-alcohol product ("the relevant product") supplied to a tied pub tenant takes place on the issue to the tied pub tenant of an invoice for that product ("the relevant invoice") where—

(a) the relevant product has previously been supplied to the tied pub tenant,

(b) the unit price of that product on the relevant invoice is higher than its unit price on the most recent previous invoice for that product issued to the tied pub tenant, and

(c) the following two conditions are met.

(2) The first condition is that one or more invoices for the relevant product were issued to the tied pub tenant in the comparison period.

(3) The second condition is that—

$$\left(\frac{A-B}{B}\times 100\right) > C + 20$$

where—

A is the amount that comparison period non-alcohol products would have cost the tied pub tenant if they had been invoiced at current period prices;