

Draft Regulations laid before Parliament under sections 73(1) and 161(4) of the Small Business, Enterprise and Employment Act 2015, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2021 No.

ENTERPRISE, ENGLAND AND WALES

**The Small Business, Enterprise and Employment Act
2015 and Pubs Code etc. (Amendment) Regulations 2021**

Made - - - - *****
Coming into force - - *1st April 2022*

The Secretary of State in exercise of the powers conferred by sections 42(1), 43(1), 43(3), 43(5), 43(6), 44, 45(1), 45(2), 45(3), 48(3), 69(9)(a), 71(1) and 161(2) of the Small Business, Enterprise and Employment Act 2015⁽¹⁾, makes the following Regulations.

In accordance with sections 73(1) and 161(4) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Small Business, Enterprise and Employment Act 2015 and Pubs Code etc. (Amendment) Regulations 2021 and come into force on 1st April 2022.

(2) These Regulations extend and apply to England and Wales.

Amendment of the Small Business, Enterprise and Employment Act 2015

2. Schedule 1 contains an amendment to the Small Business, Enterprise and Employment Act 2015.

Amendment of the Pubs Code etc. Regulations 2016

3. Schedule 2 contains amendments to the Pubs Code etc. Regulations 2016⁽²⁾.

Transitional provision

4.—(1) The Pubs Code etc. Regulations 2016 continue to apply to a “transitional case” as if the amendments in paragraphs 1 to 14 and 19 to 20 of Schedule 2 had no effect.

(1) 2015 c. 26, amended by Enterprise Act 2016 c. 12; there are other amending instruments, but none are relevant.
(2) S.I. 2016/790.

(2) In paragraph (1) a “transitional case” means a case in which an event specified in regulations 24 to 27 of the Pubs Code etc. Regulations 2016 occurs before the day on which these Regulations come into force.

Date

Name
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial
Strategy

SCHEDULE 1

Regulation 2

Amendment of the Small Business, Enterprise and Employment Act 2015

1. For section 69(1)(b) of the Small Business, Enterprise and Employment Act 2015 substitute—
 - “(b) in any subsequent financial year, if for a period of—
 - (i) at least 6 months in the previous financial year, in the case of a subsequent financial year ending before 1 April 2023, or
 - (ii) at least 3 months in the previous financial year, in the case of a subsequent financial year ending after 31 March 2023,the person was the landlord of 500 or more tied pubs.”.

SCHEDULE 2

Regulation 3

Amendment of the Pubs Code etc. Regulations 2016

Introduction

1. The Pubs Code etc. Regulations 2016 are amended as follows.

Amendment of regulation 2 (general interpretation)

- 2.—(1) Regulation 2(1) is amended as follows.
 - (2) After the definition of “period of response” insert—

““procedural or event dispute” has the meaning given in regulation 32(6);”.
 - (3) After the definition of “pubs entry training” insert—

““referral period” has the meaning given in regulation 35(5);”.
 - (4) After the definition of “rent review date” insert—

““required full response” has the meaning given in regulation 33(3);

“resolution period” has the meaning given in regulation 32A(2);

“response under the relevant provisions” has the meaning given in regulation 30(3);”.
 - (5) In the definition of “revised response” for “regulation 33(3)” substitute “regulation 33A(1), (2), (4) and (5)”.
 - (6) Omit the definition for “subsequent proposed tenancy or licence”.
 - (7) After the definition of “trigger event” insert—

“;

“updated period of response” has the meaning given in regulation 32B(2);

“updated full response” has the meaning given in regulation 32B(3).”.

Amendment of regulations 3, 4, 5 and 6 (significant price increase)

3. In each of regulations 3(4)(d), 4(4)(d), 5(4)(d) and 6(4)(d) for “ending” substitute “beginning”.

Amendment of regulation 23 (the MRO notice)

4. In regulation 23(2)(b) after “beginning with” insert “the day after”.

Amendment of regulation 29 (effect of tenant’s notice)

- 5.—(1) Regulation 29 is amended as follows.
- (2) In paragraphs (3)(b) and (c) omit “which is MRO-compliant”.
 - (3) After (3)(c) insert—
“
(d) a statement of the proposed rent or money payable in lieu of rent payable in respect of the tied pub tenant’s occupation of the premises concerned under the proposed tenancy or licence.”
 - (4) After paragraph (5) insert—
“(5A) Where a full response includes a proposed tenancy or licence that tenancy or licence must be MRO-compliant.”
 - (5) In paragraphs (7) and (8) after “begins with” insert “the day after”.
 - (6) In paragraph (9)(b) for “on the day on which” substitute “the day after the day on which”.

Amendment of regulation 30 (terms and conditions required in proposed MRO tenancy)

- 6.—(1) Regulation 30 is amended as follows.
- (2) In paragraph (1)(c) for the words “a full response” to the end substitute “a response under the relevant provisions”.
 - (3) After paragraph (2) insert—
“(3) In these Regulations a “response under the relevant provisions” refers to—
 - (a) a full response under regulation 29(3);
 - (b) an updated full response;
 - (c) a required full response; or
 - (d) a revised response.”

Amendment of regulation 31 (terms and conditions regarded as unreasonable in relation to proposed MRO tenancy etc)

7. In regulation 31(1)(c) and (5)(c) for the words “a full response” to the end substitute “a response under the relevant provisions”.

Substitution of regulation 32 (MRO response: procedural or event dispute)

8. For regulation 32 substitute—

“MRO response: procedural or event dispute

- 32.—(1) This regulation applies where a pub-owning business has received an MRO notice.
- (2) Where there is a procedural or event dispute the tenant or pub-owning business may refer the matter to the Adjudicator.
 - (3) Paragraph (4) applies where the tied pub tenant or the pub-owning business intends to make a referral under paragraph (2).
 - (4) Before the referral is made the tenant, or, as the case may be, the pub-owning business must notify the other, in writing, of that intention.

(5) A referral under paragraph (2) must be made within the period of 14 days beginning with the earlier of—

- (a) the day after the day on which the tied pub tenant receives a full response under regulation 29(3) or (4) (whether or not regulation 29(5A) is complied with); or
- (b) the day after the end of the period of response.

(6) In these Regulations a “procedural or event dispute” is, subject to paragraph (7), 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 the other requirements of regulation 29; or
- (c) the tied pub tenant disagrees with the pub-owning business’s reasons under regulation 29(4)(b).

(7) A procedural or event dispute does not include a situation where the tied pub tenant considers that a proposed tenancy or licence in the full response is not MRO-compliant.”.

Insertion of regulation 32A to 32C

9. After regulation 32 insert—

“The resolution period

32A.—(1) From the beginning of the resolution period to the end of the MRO procedure, the tied pub tenant and pub-owning business must seek to agree a tenancy or licence that is MRO-compliant and must seek to agree the rent or money in lieu of rent that is to be payable in respect of the occupation of the premises concerned under the proposed tenancy or licence.

(2) In these Regulations the “resolution period” means the period which begins at the time specified in paragraph (3) or (7) and ends at the time specified in paragraphs (4) to (6).

(3) Unless paragraph (7) applies, the resolution period begins with the earlier of—

- (a) the day after the day on which the tied pub tenant receives a full response under regulation 29(3); or
- (b) the day after the day on which the period of response ends.

(4) The resolution period ends with the earliest of—

- (a) the period of 3 months beginning with the day on which the resolution period began;
- (b) the day on which the tied pub tenant communicates to the pub-owning business, in writing, a decision to accept a tenancy or licence proposed by the pub-owning business; or
- (c) the period specified in paragraph (6).

(5) During the resolution period, the tied pub tenant may give notice in writing to the pub-owning business of the tenant’s intention to end the resolution period.

(6) Where the tied pub tenant gives notice under paragraph (5), the resolution period ends with the later of the following—

- (a) the period of 7 days beginning with the day after the day on which the pub-owning business receives the notice; or
- (b) the period of 21 days after the day on which the resolution period began.