This draft statutory instrument supersedes the draft of the same title which was laid before Parliament and published on 14th April 2016 (ISBN 9780111146323). It is being issued free of charge to all known recipients of that draft Statutory Instrument.

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

2016 No. 0000

ENTERPRISE, ENGLAND AND WALES

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

Made - - - - 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(**a**).

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(**b**).

MRO disputes: fees, costs etc.

3.—(1) This regulation applies where—

(**a**) 2015 c. 26.

(**b**) Section 43(2) of SBEEA 2015 defines "market rent only option".

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

(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.

(**a**) Section 70(1) of SBEEA 2015 defines "tied pub tenant".
(**b**) Section 69 of SBEEA 2015 defines "pub-owning business".
(**c**) Section 72(1) of SBEEA 2015 defines "the Adjudicator".
(**d**) S.I. 2016/XXX.

Permitted maximum penalty

5.—(1) For the purposes of section 58 of SBEEA 2015, the permitted maximum is 1% of the pub-owning group's annual turnover.

(2) For this purpose the pub-owning group's annual turnover is to be determined as follows.

(3) Where the pub-owning business published accounts during the period of 12 months immediately preceding the date on which the relevant notice is given, the pub-owning group's annual turnover is—

(a) where the accounts cover a period of exactly 12 months, the pub-owning group's applicable turnover for the period covered by those accounts;

(b) where the accounts cover a period of more than or less than 12 months, the pub-owning group's applicable turnover for the period covered by the accounts, divided by the number of months in that period, and multiplied by 12.

(4) Where the pub-owning business did not publish accounts as mentioned in paragraph (3), the pub-owning group's annual turnover is—

(a) where the pub-owning group has applicable turnover for each of the 12 months ending with the month preceding that in which the relevant notice is given, its applicable turnover for those 12 months;

(b) where the pub-owning group has applicable turnover for some but not all of those 12 months, its applicable turnover for those 12 months, divided by the number of those months for which the pub-owning group had applicable turnover, and multiplied by 12;

(c) where the pub-owning group has no applicable turnover for those 12 months, nil.

(5) In this regulation—

(a) "the relevant notice" means the notice under section 58(2) of SBEEA 2015;

(b) "the pub-owning group" means the pub-owning business and its group undertakings (if any).

Permitted maximum penalty: interpretation

6.—(1) For the purposes of regulation 5, the pub-owning group's "applicable turnover" for any period is the total of all income that is—

(a) receivable in the period by the pub-owning business or any group undertaking of the pub-owning business; and

(b) within paragraph (2),

after deduction of trade discounts, value added tax and other taxes based on that income.

(2) Income is within this paragraph if it is—

(a) derived from the provision of products and services falling within the pub-owning group's ordinary activities in the United Kingdom;

(b) rent or money payable in lieu of rent, in respect of land in the United Kingdom; or

(c) gifts, grants, subsidies or membership fees receivable in the course of the pub-owning group's ordinary activities in the United Kingdom.

(3) Amounts are to be calculated for the purposes of this regulation in conformity with generally accepted accounting principles and practices.

(4) In this regulation, "the pub-owning group" has the same meaning as in regulation 5.

Review of regulations 3 and 4

7.—(1) The Secretary of State must, for each review period, carry out a review of regulations 3 and 4 of these Regulations.

(2) As soon as practicable after a review period, the Secretary of State must publish a report of the findings of the review for that period.

(3) The first review period is the period beginning on the date on which these Regulations come into force and ending 2 years after the following 31 March.

(4) Subsequent review periods are each successive period of 3 years after the first review period.

Name
Minister of State for Small Business, Industry and Enterprise
Date Department for Business, Innovation and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the first to be made under sections 45(4), 51 and 58(6) of the Small Business, Enterprise and Employment Act 2015 ("SBEEA 2015").

Regulation 3 of these Regulations makes provision for the fees which must be paid by a tied pub tenant or by a pub-owning business, where a dispute (an "MRO dispute") is referred to the Adjudicator in connection with the offer of a market rent only option. Regulation 3 also makes provision for the costs which the Adjudicator may order the tenant to pay in respect of the arbitration.

Where a tenant refers a dispute (which is not an MRO dispute) to the Adjudicator in connection with the Pubs Code, section 51 of SBEEA 2015 requires the tenant to pay a fee to the Adjudicator. Regulation 4 of these Regulations sets that fee. Regulation 4 also makes provision for the costs which the Adjudicator may order the tenant to pay in respect of the arbitration.

Section 55 of SBEEA 2015 provides that where the Adjudicator is satisfied, as a result of an investigation, that a pub-owning business has failed to comply with the Pubs Code, or has failed to follow the Adjudicator's recommendations, the Adjudicator may impose financial penalties on the business. Regulations 5 and 6 of these Regulations specify the maximum penalty which may be imposed by the Adjudicator on the pub-owning business.

Regulation 7 requires the Secretary of State to carry out a review of regulations 3 and 4.

An Impact Assessment has been prepared for these Regulations and is published at www.gov.uk/bis.

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