



PUBS CODE: STOCKING REQUIREMENT: CLARIFICATION NOTE BY BEIS

Introduction

This note sets out the Department's clear view that a market rent only ('MRO') compliant tenancy can include a stocking requirement (if reasonable).

The Department has taken the exceptional step of issuing this note of clarification in response to questions raised by stakeholders as to the legality of a provision of the Pubs Code etc Regulations 2016 (the "Pubs Code") in light of the terms of the Small Business, Enterprise and Employment Act 2015 ("the 2015 Act"). Questions about how the Pubs Code applies to individual cases and the need for general guidance on the Pubs Code remain matters for the independent Pubs Code Adjudicator.

Detail

The 2015 Act makes provision for tenants of tied pubs to be offered an MRO option in specified circumstances.

Section 43(4)(a)(ii) of the 2015 Act provides that an MRO compliant tenancy must not contain "any product or service tie other than one in respect of insurance". But importantly, section 72(1) excludes a "stocking requirement" (as defined by sections 68 and 72) from the meaning of a product tie.

The 2015 Act therefore clearly provides that a stocking requirement may be included in an MRO compliant tenancy. Nothing in the Pubs Code, which is made under the terms of the 2015 Act, can affect this clear statutory position.

Section 43(4)(a)(iii) of the 2015 Act provides that an MRO compliant tenancy must not contain unreasonable terms or conditions and that section 43(5) allows the Pubs Code to specify terms and conditions that are to be regarded as such.

The Pubs Code does specify terms which are to be regarded as unreasonable but the list of terms specified is not exhaustive. Regulation 31(2)(c) provides that terms which are "not common terms in agreements between landlords and pub tenants who are not subject to product or service ties" are to be regarded as unreasonable.

Even if a stocking requirement were to be regarded as an uncommon term, it is implicit that regulation 31(2)(c) - read, as it must be, in the light of the governing terms of the 2015 Act - does not apply to a stocking requirement. In such case regulation 31(2)(c) could not have any legal effect if and insofar as it purported to apply to a stocking requirement, but section 43(4)(a)(iii) of the 2015 Act would continue to apply.