

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT PUBS CODE (FEES, COSTS AND
FINANCIAL PENALTIES) REGULATIONS 2016

Monday 18 July 2016

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Friday 22 July 2016

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The Committee consisted of the following Members:

Chair: JOAN RYAN

† Barclay, Stephen (<i>North East Cambridgeshire</i>) (Con)	† McCartney, Jason (<i>Colne Valley</i>) (Con)
Bradshaw, Mr Ben (<i>Exeter</i>) (Lab)	Miller, Mrs Maria (<i>Basingstoke</i>) (Con)
Burns, Sir Simon (<i>Chelmsford</i>) (Con)	† Morden, Jessica (<i>Newport East</i>) (Lab)
† Caulfield, Maria (<i>Lewes</i>) (Con)	† Pawsey, Mark (<i>Rugby</i>) (Con)
Coaker, Vernon (<i>Gedling</i>) (Lab)	† Rees, Christina (<i>Neath</i>) (Lab/Co-op)
† Esterson, Bill (<i>Sefton Central</i>) (Lab)	† Shapps, Grant (<i>Welwyn Hatfield</i>) (Con)
† James, Margot (<i>Stourbridge</i>) (Con)	† Smith, Henry (<i>Crawley</i>) (Con)
† Lord, Jonathan (<i>Woking</i>) (Con)	David Weir, <i>Committee Clerk</i>
† Lucas, Ian C. (<i>Wrexham</i>) (Lab)	† attended the Committee

The following also attended, pursuant to Standing Order No. 118(2):

Drummond, Mrs Flick (*Portsmouth South*) (Con)

First Delegated Legislation Committee

Monday 18 July 2016

[JOAN RYAN *in the Chair*]

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

4.30 pm

The Parliamentary Under-Secretary of State for Business, Innovation and Skills (Margot James): I beg to move,

That the Committee has considered the draft Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016.

It is a pleasure to serve under your chairmanship, Ms Ryan. The regulations, like the Pubs Code etc. Regulations 2016, which were debated last week, are made in exercise of powers under part 4 of the Small Business, Enterprise and Employment Act 2015, which regulates the dealings between pub-owning businesses and their tied tenants in England and Wales. The regulations are much shorter and less complex than last week's regulations, and I will deal with them as briefly as possible. They have two purposes: to set fees and cost limits for arbitrations and market rent only disputes referred to the adjudicator; and to set a maximum penalty that the adjudicator may impose for a code breach following an investigation. I will take each area in turn.

On fees, the regulations set out the applicable fees payable by a tenant for referrals of pubs code breaches to the Pubs Code Adjudicator for arbitration, and by a tenant or pub-owning business for referrals of market rent-only disputes. They also make provision about the maximum amount that a tenant may be required to pay a pub-owning business following arbitration by the Pubs Code Adjudicator. Finally, the regulations regulate payments to be made by large pub-owning businesses—defined in the 2015 Act as those owning 500 or more tied pubs—and their tied pub tenants by way of fees and costs in relation to market rent only disputes and arbitrations of pubs code disputes.

The fees and costs provisions largely mirror the arbitration or mediation arrangements in the existing industry voluntary code and have therefore not generated much comment. The financial penalties are not an aspect of that voluntary code and may be imposed by the adjudicator only after an investigation. Financial penalties are just one form of enforcement available to the adjudicator following an investigation. Under the Act, he may make recommendations about what a pub-owning business should do to comply with the pubs code and the time by which it should do that. He may also require the business to publish information relating to the investigation.

Where the adjudicator imposes a financial penalty, the regulations specify what the maximum penalty should be. The adjudicator has complete discretion as to whether he imposes a financial penalty and in what amount, up to the maximum stipulated. The nature and effect of the breaches will inform the exercise of that discretion. Accordingly, we expect the maximum penalty to be applied only in extreme cases, for very serious breaches

of the code. Where the maximum penalty is awarded, its purpose is clearly to have a marked and serious effect on the pub-owning business. It is therefore entirely appropriate that the maximum should be 1% of the UK turnover of the whole group to which the pub-owning business belongs, not just the turnover of the part of the group that owns tied pubs.

In summary, the regulations make provisions in respect of fees, costs and financial penalties that are fair and proportionate to the intended purpose. I commend them to the Committee.

Ian C. Lucas (Wrexham) (Lab): May I compliment the hon. Lady on her presentation, congratulate her on her appointment and wish her all the best in Victoria Street? That is an excellent place for a Minister to be—I was there once. There is even someone behind her, supporting her, who was there when I was too.

Margot James: I thank the hon. Gentleman for his kind words, and know that I have a number of sources of advice if I require any, as I am sure I will over the coming months.

4.35 pm

Bill Esterson (Sefton Central) (Lab): It is a pleasure to serve under your chairmanship, Ms Ryan. I join my hon. Friend the Member for Wrexham in welcoming the Minister to her post. She follows in some illustrious shoes. I have enjoyed debating with the right hon. Member for Broxtowe (Anna Soubry) over the past nine months or so, especially on the topic of the pubs code and the adjudicator, and on creating a level playing field and a fair arrangement between tied pub tenants and pub-owning companies. I welcome the Minister to that debate and to our attempt to create a fair market for pubs. Indeed, we debated the previous statutory instrument as recently as last Wednesday.

I am sure that the Minister, new though she is to the topic, will understand that it is important to get the measures right. It is quite right that we support community pubs not just because of all that they bring to the community, but so that we support small local business including the increasing number of micro-brewers such as Red Star Brewery from Formby, whose beer was in Strangers Bar not long ago. All hon. Members are able to get the beers of their favourite local brewers into Strangers if they apply.

The regulations need not detain us for too long, but I have a couple of questions for the Minister. I hope she can clarify what I have understood. She mentioned the adjudicator's role in resolving disputes. I believe she said that the adjudicator sets the level of the fees and decides the nature, size and scale of any penalties that might be implemented in the case of complaints or breaches. Will she confirm that?

The Minister mentioned that the legislation includes a threshold of pub companies owning 500 or more pubs. We debated that topic in Committee for the 2015 Act. There are concerns about pub-owning companies possibly being split into smaller companies that own fewer than 500 pubs. Thereby, the pub-owning company would not be covered by the adjudicator. Will she keep an eye on that particular concern and challenge that has been raised in Committee and outside this place?

My final question is about enforcement. Will the Minister keep in mind concerns about the level of resources that the adjudicator will have, and about his ability to enforce penalties that he might wish to impose? How does the Minister envisage enforcement being carried out, and what is her view, at this early stage in her role, on ensuring that the adjudicator's office is sufficiently well resourced to achieve what everybody wants, which is the proper balance between tied pub tenants and pub-owning companies? With that, I happily await the Minister's response.

4.38 pm

Margot James: I thank the hon. Gentleman for his kind comments. He asked whether the level of fees is set by the adjudicator. It is, in fact, set by the regulations, and the adjudicator has discretion within the regulated amount set out in the regulations.

The hon. Gentleman asked me to keep in mind the potential for pub-owning companies to fragment their business such that large sections fall just beneath the threshold of 500 or more tied pubs as set out in the regulations. In that respect, we will certainly keep

the operation of the code under review. The adjudicator must report on cases of avoidance if he thinks that unfair practices are going on. There will be some protection by the fact that the level of fines—the 1% of group turnover—applies to the entire group, no matter how many small subdivisions the pub-owning company might establish.

Finally, the hon Gentleman mentioned the issue of resources for the adjudicator. I agree that there is no point having an adjudicator if he is not sufficiently resourced to tackle the many cases that might come before him. We think that the resources established will meet the likely demand, but that will be kept under review. I hope I have answered all the hon. Gentleman's questions. If I have left one out, perhaps he would like to intervene.

Bill Esterson *indicated dissent.*

Question put and agreed to.

4.41 pm

Committee rose.

