BRITISH INSTITUTE OF INNKEEPING

BII FACTSHEET FOR PUBS CODE COMPANIES IN ENGLAND & WALES

(Punch, Marston's, Stonegate, Greene King, Star Pubs and Bars and Admiral)

Tenancies at Will (TAW's) / Short Agreements (Less than 1 year)

If you are considering entering a tenancy at will (TAW) or Short Agreement with Punch, Marston's, Stonegate, Greene King, Star Pubs and Bars and Admiral, this factsheet is designed to help you to evaluate the agreement you are considering and help you to make notes on what to ask when talking to your pub company representative. If you are not entering into an agreement with the companies listed there is a separate factsheet that can be found on the BII website.

If you entering into a short agreement you must complete pubs entry training before entering into a short agreement (unless you have certain previous experience) and you can access this here.

The Pub Industry

So, what type of person do I need to be to run a pub?

As well as being someone prepared to make the personal lifestyle commitment described above, running a pub is a profession and a serious business commitment. Your personality and character type are every bit as important as your business acumen and personal skills. Below is a list of personality traits and skills that are essential:

- **Business-minded; experience of running some sort of business in the past.**
- **Financially minded/good with figures.**
- **Good communication skills & a genuine interest in people.**
- **Outgoing personality.**
- **Positive/ 'can do' attitude/looking for a challenge.**
- **Ability to do lots of things at the same time – 'multi-tasking'.**
- **Reasonable level of health and fitness.**
  Great organisational skills.
- **Ability to enforce rules.**
- **Motivated to make money.**
- **Possession of a licensing qualification e.g. Award for Personal Licence Holders and a Personal Licence.**

The Tenancy at Will (TAW) / Short Agreement

It is important that you are given a copy of the agreement by the company as soon as possible. Companies do not tend to make any alterations to their standard agreements. Even though this is only a short agreement, it will have responsibilities contained in it and it is important you understand these so you should seek legal advice before signing anything.

TAW's are agreements which can be terminated at short notice and are often used to enable you to move into the pub and start operating the business whilst a longer agreement is being finalised.

Short Agreements are similar to TAW's but you should check the notice period that applies to the agreement as it can be longer.

All pub companies should ensure that you understand if you are on a short agreement they need to tell you when you will gain full Pubs Code rights. This will happen when you:

- begin negotiations relating to a prospective substantive tied tenancy or licence to occupy a particular pub, or
- you enter into a short agreement which, when combined with any other short agreement, will entitle you to occupy the pub for a period of more than 12 months, or
- you have occupied the pub for a period of more than 12 months under any short agreement or tenancy at will.

Rent: When agreeing the rent, ask what concessions are available in the early weeks/months of trading. Can the rent be stepped up to its full amount over a period of time? What deposit is required and will it earn interest whilst held by the company?

Trading Terms: What are the arrangements for payment of goods supplied by the pub company? Is there a credit facility available? Is a trading account deposit payable and, again, will it earn interest whilst held by the company.

Legal right to information: Most Pubs Code rights do not apply to those on short agreements (such as the right to request a Market Rent Only option, Rent Proposal or Rent Assessment Proposal). However, pub-owning businesses do have certain duties to provide those on short agreements with information and advice. This includes information on:

- the rent payable and arrangements for paying utility bills
- maintenance and repair obligations
- any initial works which your pub company is aware must be carried out, including information on who is responsible to complete the works and by when and a Schedule of Condition prepared before those initial works are carried out
- responsibility for utility and safety certificates
- obligations in relation to the purchase tied products and services, the payment of deposits and the transfer of employment rights
- liability for fees, charges and penalties.

In addition the agreement should clearly state: -

- Start date of the agreement (some may also specify length of term and notice period).
- Any rent deposit required.
- Other rates, taxes, assessments, outgoings applicable.
- Fixtures and fittings and equipment responsibility.
- Obligation to notify the pub company of any notices received at the property.
- Requirement to vacate the property on receipt of notice from the company.

- Obligation to adhere to opening times.
- Details of machine tie, approved suppliers and share terms.
- Right of pub company representative to inspect premises at reasonable notice.
- Right of pub company to serve notice at any time during the agreement.

Minimum standards in the tenant relationship

In addition to the information you must be provided with under the Pubs Code, the regulated pub companies seek to promote good practice in their treatment of their tenants on short agreements. Many of their existing business practices for dealing with short agreements are reflected in the following agreed minimum standards, which seek to provide consistency and clarity.

Each company commits to dealing with its tied tenants on short agreements in a fair and lawful manner, and to the following minimum standards which exceed the legal duties on them set out in the Pubs Code.

Tenants will be provided with the following by their pub company before they take on a short agreement:

- Information about Pubs Code rights which apply to those on short agreements (and any other applicable codes of practice), and information about the Pubs Code Adjudicator.
- Information on the role of the Code Compliance Officer (CCO), who is responsible for verifying compliance with the Code. The CCO can answer enquiries in relation to Code rights and will ensure these minimum standards in relation to short agreement are met.
- Information about the role of the Business Development Manager (BDM) and the support and guidance they can provide. This includes anyone else who discusses rent, repairs or business planning with the operator on a short agreement on behalf of the company.
- Information about the company complaints procedure.
- An explanation of the terms of the short agreement, the date it begins, the duration or period and the arrangements for termination by the landlord or the tenant. Short agreements will be in writing.
- Advice in writing in advance of entering a short agreement that the tenant should not invest their own capital into the property whilst on a short agreement, and the risk and implications if they do.
- Advice to seek independent professional advice on their short agreement, including signposting to helplines and independent sources of information relevant to the running of a tied pub, including providing the factsheet on short agreements published by the British Institute of Innkeeping (BII). The BII provides its members independent professional advice which can be accessed here.
- Provision of any pub company policies for providing assistance to tenants.

During the short agreement

The company will:

- provide appropriate written notes of their discussions with the tied tenant regarding rent, repairs, and current and future business plans within 14 days of the discussion taking place and give the tenant 7 days to respond if they do not agree with any aspect of the record.
- not impose any detriment or liabilities on a tied tenant as a result of any reading taken from a flow monitoring device without having additional secondary evidence.
- not expose a tenant or prospective tenant to detriment for seeking to ensure the company complies with the Pubs Code and meets these minimum standards.

More about the Tie

The ‘tie’ basically places an obligation on the tenant to buy certain agreed products from the company (or its nominated supplier) at prices published and determined by the company. These purchasing obligations are contained in tied tenancy and lease agreements. There are three types of tie that may apply to your agreement, you should check this before signing any agreement: -

Drinks Tie: This can vary from just having to buy just beer (partial tie) to all drink’s products i.e. beers, wines, cider, spirits, soft drinks (full tie). Remember that this may refer to both draught and bottled products.

Gaming Machines Tie: This would include amusement machines such as fruit machines, quiz machines, jukeboxes, pool tables etc. Where machines are applicable you should find out how the Pub Company deals with the split of the income.

Buildings Insurance: Most companies need to know their building is adequately insured and do so by arranging such insurance themselves and re- charging the tenant, normally on the rent invoice. You should check if Buildings Insurance is going to be charged under the agreement.

So again, it’s important that you understand the detail of what ties apply to the agreement you are being offered as this will have an impact on the potential profitability of the pub and your profit and loss.

Price Lists & Discounts: The company must give you a full price list for all drinks products that you are tied for. They may offer discounts on certain products and these should also be explained. It is these prices you must use in your forecast profit and loss calculations and you should be aware these prices may differ to what may be available elsewhere, but that is what you are signing up to. An outline of trading terms (e.g. credit terms) should also be provided. Pricing and any changes to price lists should always be communicated to you in a fair, timely and transparent way.

Flow Monitoring Equipment: Your agreement may also give the right for the pub company to install flow monitoring equipment within the premises. This equipment measures the flow of beer from the cellar to the point of dispense and reports will show how many pints of each particular product have been dispensed on each and every line. Companies use this to compare dispensed volumes to purchased volumes on tied products. Flow monitoring equipment may or may not already be installed in the particular pub you are discussing and you should ask if it is installed in the pub you are being offered. The company is responsible for the installation costs, maintenance and calibration of the equipment, but responsibility for providing electricity is down to you as the tenant. The data collected in the form of reports should be shared with you and apart from its obvious role in ‘policing’ the drinks tie, it can actually be very useful for stock takers and in evaluating the success of certain brand promotions and quality checks. Many companies provide the facility for you to access these reports online or you will be able to request them from your company contact or area manager.

Breach of Drinks Tie: This is often referred to as ‘buying out’ i.e. the tenant breaks his obligation to purchase tied drink products from the company and buys from a third-party supplier i.e. outside of the tie. Pub owning companies take the drinks tie very seriously and breaking this purchasing rule is considered a major ‘breach’ of the agreement and they are likely to serve notice on your agreement and ask you to leave if you breach the tie.

Expenses: Are there any other amounts payable by you to the pub company?

The Premises

You should ask for a copy of the Premises Licence and note any conditions that apply to it. Ask the pub company if there are any issues affecting the premises licence e.g. noise orders/restricted operating hours on beer gardens etc.

You should inspect the premises, ideally with the pub company surveyor or representative, and ensure it is in a reasonable condition to open to the public. Identify any works that need to be carried out by the company and agree the timescale for these. Ask for a schedule of condition and what your obligations are on repairs/maintenance are whilst you are a tenant at will. Normally such items as building/roof/cellar cooling/dispense equipment repairs etc will remain the responsibility of the pub owning company.

Note: Because this is only a tenancy at will/short agreement, you should **NOT** spend any significant amount of money on the premises, even on decorations, unless you have it in writing from the pub company that any money you spend will be reimbursed.

Whilst carrying out this inspection, don't forget the domestic accommodation if there is any. It should be in a fit and proper living condition. Again, agree any works that need to be done by the company before you move in and like everything if it is promised in the future then get that promise in writing.
It is unlikely that you will be asked to purchase the fixtures and fittings, but you will be asked to keep it in good order. Ask for a full list of fixtures and fittings and check it is actually in place and in good repair.
It is a good idea to take a photographic record of trading areas and fixtures and fittings on the day of takeover.

You should also fully understand what insurances the pub company pay for (e.g. buildings, fixtures and fittings) and what is your own responsibility to take out and pay for (public liability, contents, employers etc.)

Financial Considerations

Even though this may only be a tenancy at will/short agreement, you will need some form of capital behind you for a healthy cash flow and early expenses such as deposits, initial stock etc. You should talk to a licensed trade accountant who will be able to help you identify the finances needed and produce a cash flow forecast and a forecast profit and loss. There is a list of trade accountants in the Trusted Partners section of the BII website. He/she will also be able to help you with practical issues such as pricing, wage planning, registering for VAT etc.

The pub company may have some historical trading and expenses data to help in this exercise. They should also tell you about any other expenses you are liable for.

You should also appoint a stock taker and have stocks carried out regularly to make sure all is in order.

It is likely that staff will have been transferred to you under the Transfers of undertakings (protection of employment or TUPE), which is regulations that protect employees rights when the business they work for is transferred to a new tenant. It is important that the outgoing tenant provides you with the contracts of employment for any staff that TUPE to you.

Lastly, as we have tried to emphasise throughout this document, make sure you are happy with what is on offer, that promises are made in writing and ring the BII's Landlord and Tenant helpline (**01276 684449**) or seek professional advice if you are unsure of anything.

Pubs Code Adjudicator

Pubs Code Rights are enforced by the Fiona Dickie the Pubs Code Adjudicator and further information can be found here.