

TEMPORARY TENANCIES /TENANCIES AT WILL/SHORT AGREEMENTS

BII FACTSHEET FOR ENGLAND & WALES

If you are considering entering into a temporary pub tenancy agreement in England and Wales, 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 considering a longer term agreement, then the full Pre-Entry Awareness Training (PEAT) should be undertaken and this information does not replace PEAT.

In 2016, the government introduced the Statutory Pubs Code which applies to all pub companies in England and Wales who own more than 500 tied pubs. The Code sets out a requirement for all prospective tenants to undertake pre-entry awareness training so that they fully understand the implications of pub agreements. The majority of pub owning companies with less than 500 tied pubs also subscribe to the England & Wales Tenanted and Leased Codes of Practice and many companies have their own individual Company Codes of Practice which set out their particular processes and procedures of how they will act within the spirit of these codes. Some are displayed on company websites or you may ask at interview for a copy.

In the Statutory Code, a Short Agreement is defined as:-

- A tenancy at will; or
 - A tied tenancy of no more than 12 months
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Most of the provisions of the Pubs Code do NOT apply to short agreements, but they do place a responsibility on the pub owning company to provide certain information, which is covered later in this factsheet.

Taking a temporary pub tenancy may simply be your preferred 'short term' choice and some people make a living operating a series of temporary tenancies for pub companies. At other times they may be used to allow you to move into the pub of your choice and start operating sooner, whilst a longer term agreement is being negotiated.

Whichever case applies to you, running a pub of whatever type is a big lifestyle decision as well as a business opportunity and we would encourage you to talk to family and friends about the impact such a commitment will have as well as taking specialist advice.

THE PUB INDUSTRY

So what type of person do I need to be to run a pub, even on a temporary basis?

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 is 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 TEMPORARY AGREEMENT

- It is important that you are given a copy of the temporary 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 temporary agreement, it will have responsibilities contained in it and it is important you understand these so you should seek legal advice before signing anything.
- Temporary Tenancies are often also referred to as 'Tenancies at Will' or TAW's, and the agreements are **not permitted to be for a period of more than one year and they must not be renewed**. These are short term 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 term agreement is being finalised. Companies should make it clear to you that you are taking on a temporary agreement only and as such you are not covered by any of the codes of practice or by the Landlord and Tenant Act. Temporary tenancies cannot be assigned nor can sub-letting take place.
- 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.
- Expenses: Are there any other amounts payable by you to the pub company?
- The agreement should clearly state:-
 - Start date of the agreement (some may also specify length of term and notice period)
 - Rent payable per week and payment terms
 - Any rent deposit required
 - Other rates, taxes, assessments, outgoings applicable
 - Maintenance and repair obligations
 - Responsibility for utility and safety certificates
 - 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
 - Extent of the drinks tie and payment terms
 - 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
- Liability for any other fees, charges or penalties

Note: It is possible that the agreement will not give you any idea of likely length nor will it specify what the notice period might be. Remember a temporary tenancy can't be in place for more than a year and it cannot be renewed for the same premises to the same person. So you should base your plans on that fact. You can, however, ask the pub company what their normal practice is in terms of dealing with terminations of temporary agreements.

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:-

- **Drinks Tie:** This can vary from just having to buy just beer (partial tie) to all drinks 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.
- **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.

So again it's important that you understand the detail of what ties apply to the temporary agreement you will be considering 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 the tenant 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. 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 temporary agreement and ask you to leave if you breach the tie.

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 temporary arrangement, 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 you 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.

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 might be a good idea to take a photographic record of trading areas and fixtures and fittings.

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 temporary arrangement, 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. 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 monthly stocks carried out initially.

OPERATING PLAN & SUPPORT

Although shorter term than full business planning, you should agree with the pub company the main features of your operating plan such as opening hours and what sort of drinks/food offer you are planning. If you are a member of the British Institute of Innkeeping, there are many business tools to be found in 'My BII' section of the BII website as well as an interactive, downloadable Business Plan, P&L and Cashflow workbook.

Your pub company's area manager/business relationship manager should be able to tell you what promotional and other support they offer to temporary tenants.

AND FINALLY....

Don't be tempted to rush any of the above, even if you are being put under pressure to make quick decisions. Use the checklist shown at the end of this course to help you. Take financial and legal advice.

If you are not already, you may find it helpful to become a member of your professional trade body, the British Institute of Innkeeping. Go to www.bii.org for more information on how to join. The BII can help you find your nearest training provider for such things as the Award for Personal Licence Holders, Basic Food Hygiene Training etc... The BII also provides its members with free helplines for Licensing, Legal, HR & Employment and access to BII Marketplace, which lists providers of professional services you might need as well as preferential pricing on suppliers such as PDQ machines, pub insurances, eLearning, pub equipment etc.
