

These notes refer to the Small Business, Enterprise and Employment Act 2015 (c.26) which received Royal Assent on 26 March 2015

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: THE PUBS CODE ADJUDICATOR AND THE PUBS CODE

The Pubs Code Adjudicator

Schedule 1: The Pubs Code Adjudicator

Part 1: The Pubs Code Adjudicator

Status

Paragraph 1 – Legal status

263. The Adjudicator has the legal status of a ‘corporation sole’. Being a corporation sole will ensure that the Adjudicator is able to enter contracts, and to sue and be sued, in his or her capacity as an office holder rather than any individual capacity.

Paragraphs 2 and 3 – Appointment of the Adjudicator to represent the Crown

264. The Adjudicator is appointed by the Secretary of State and acts on behalf of the Crown.

Deputy Adjudicator

Paragraphs 4 and 5 – Appointment of a Deputy Adjudicator

265. If the Secretary of State wishes, he/she may appoint a Deputy Adjudicator to carry out any of the Adjudicator’s functions. This should provide flexibility if the Adjudicator is, for example, absent through illness or occupied with other functions.

Terms of office etc

Paragraphs 6 and 7 – Period in office and how it may end

266. The Adjudicator and Deputy Adjudicator, neither of whom are civil servants, may each be appointed for up to four years and may then be appointed for one or two further terms of up to three years each. Either can resign by giving written notice to the Secretary of State; or the Secretary of State may dismiss either of them for being unable, unwilling or unfit to perform their official functions.

Remuneration

Paragraph 8 – Remuneration decisions

267. Although the Adjudicator may pay remuneration, allowances and payments related to pensions to the Adjudicator and Deputy Adjudicator, the amounts are controlled by the Secretary of State.

Staff

Paragraph 9 – Secondments

268. The Adjudicator is not permitted to appoint staff directly but may make arrangements for staff to be seconded to serve as members of the Adjudicator's staff. Before doing so, the Adjudicator must obtain the Secretary of State's approval of his policy as regards the number of seconded staff, any payments made to or in respect of their secondment and the terms and conditions on which staff are seconded.

Conflicts of interest

Paragraphs 10 and 11 – Arrangements for when the Adjudicator, Deputy Adjudicator or any of their staff have an interest that may conflict with their duties

269. The Adjudicator must make and publish procedural arrangements for dealing with conflicts of interest. If both the Adjudicator and, if appointed, Deputy Adjudicator are unable to act due to a conflict of interest, the Adjudicator may require the Secretary of State to appoint an acting Deputy to deal with the matter where the conflict arises. Because sections 48(5)(b) and 50(4)(b) would enable the Adjudicator to appoint someone else to act as arbitrator in a dispute where the Adjudicator may have a conflict of interest, these paragraphs are primarily intended to assist in relation to other functions of the Adjudicator, such as investigations.

Validity of acts

Paragraph 12 – Appointment errors

270. If there has been a fault in the way the Adjudicator, Deputy Adjudicator or acting Deputy Adjudicator has been appointed, that does not impair the validity of what they do in their appointed roles.

Application of seal and proof of documents

Paragraphs 13 and 14 – Use of the Adjudicator's seal

271. These paragraphs set the conditions for the application of the Adjudicator's seal to a document and the correct treatment of such a document: it is to be received in evidence and treated as duly executed unless this is shown to not be the case. The seal itself has to be certified as authentic by the Adjudicator's signature or the signature of someone authorised by the Adjudicator.

Accounts

Paragraph 15 – Financial reporting

272. This paragraph requires the Adjudicator to produce a statement of accounts for each financial year, to be approved by the Comptroller and Auditor General and then laid before Parliament by the Secretary of State.

Incidental powers

Paragraph 16 – Aiding the work of the Adjudicator

273. This paragraph allows the Adjudicator to do anything that will help with his/her work.

Assistance from the Secretary of State

Paragraph 17 – Help with resourcing

274. The Secretary of State may provide staff, premises and other facilities to the Adjudicator and may decide whether or not to do so at a charge.

Exemption from liability for damages

Paragraph 18 – Protection against most claims for damages

275. This paragraph protects the Adjudicator, Deputy Adjudicator and any staff from claims for damages by third parties, except where they have acted in bad faith or in breach of human rights. In the absence of this protection it might, for example, be possible for a pub tenant or pub-owning business to claim against the Adjudicator in the tort of negligence in relation to some advice given by the Adjudicator or the way the Adjudicator had carried out an investigation. The Government intends that the Adjudicator should not be required to spend time and funding in dealing with such claims. The Adjudicator will be subject to the normal public law duties and constraints of a public authority.

Part 2: Information powers of the Pubs Code Adjudicator

Paragraph 19 – Requirement to provide information

276. **Part 2** describes the Adjudicator's powers to require information and documents. Paragraph 19(1) allows the Adjudicator to require them for the purposes of an investigation under Section 53. This power will be exercisable against pub-owning businesses and others, but only once an investigation has commenced. Paragraph 19(2) allows the Adjudicator to require information from pub-owning businesses for the purposes of monitoring whether a pub-owning business has followed an earlier recommendation. This information could be used to help decide whether to commence an investigation. Paragraph 19(3) allows the Adjudicator to require documents and other information for the purposes of exercising any functions conferred on the Adjudicator by the Pubs Code in relation to parallel rent assessments and the market rent only option (see sections 42(5) and 44(1)(b)).

277. In each case the Adjudicator may require a person to provide documents or other information, including orally. Paragraph 19(8) protects information that could not be required to be provided in civil proceedings, such as information subject to legal privilege.

Paragraphs 20 to 22 – Offences

278. **Paragraphs 20** and **21** create offences, punishable by a fine, for intentional failure to comply with a requirement to provide information (subject to a defence of reasonable excuse) and for knowingly providing false information.

Part 3: Amendments of legislation

Paragraphs 23 to 26 – Amendments of legislation

279. Paragraphs 23 to 25 insert references to the Pubs Code Adjudicator, Deputy Pubs Code Adjudicator and member of staff of the Pubs Code Adjudicator in legislation relating to holders of a public office.
280. Paragraph 26 inserts a reference to the Act into Schedules 14 and 15 to the Enterprise Act 2002. This has the effect of applying the provisions concerning disclosure of information in Part 9 of that Act to information which may be obtained by, or may be useful to, the Adjudicator in the exercise of the Adjudicator's functions under this Act.