

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

Arbitration by Adjudicator

Section 48: Referral for arbitration by tied pub tenants

303. The aim of this section is to provide a statutory right of arbitration for a tied pub tenant against a pub-owning business. A tenant may refer a dispute for arbitration by the Pubs Code Adjudicator if it relates to an allegation that the business has failed to comply with the Pubs Code.
304. Subsections (3) and (4) provide that certain provisions in the Pubs Code may be stated to be arbitrable and certain provisions stated to be not arbitrable. The intention is that a tenant would be allowed to refer to arbitration only on key points of the Code. If the Code does not differentiate between arbitrable and non-arbitrable provisions, then a tied tenant may refer a dispute as to whether a pub-owning business has failed to comply with any provision of the Code to the Adjudicator (subsection (5)).
305. Subsection (5) specifies that where a tied pub tenant refers a dispute to arbitration, the Adjudicator has to act as arbitrator or appoint another person to do so. In most circumstances, the Adjudicator is expected to arbitrate such disputes. The Adjudicator could appoint another person where a conflict of interest may exist (for example, where the Adjudicator has previously advised on or investigated an issue which is relevant to the dispute) or where the Adjudicator does not have enough time to act as the arbitrator.