

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: THE PUBS CODE ADJUDICATOR AND THE PUBS CODE

Investigations by Adjudicator

Section 53: Investigations

318. Once the Adjudicator has published guidance about investigations (as set out in section 61), the Adjudicator may investigate whether a pub-owning business has failed to comply with the Pubs Code or has failed to follow a recommendation made by the Adjudicator after a previous investigation. As set out in section 69(7), the Adjudicator's powers to investigate a pub-owning business do not apply to those which qualify as pub-owning businesses only because they have bought a pub with extended protection, as defined in section 69(4).
319. The Adjudicator's powers to require someone to provide information for an investigation are set out in Part 2 of Schedule 1.
320. The Adjudicator has no similar power to require people to provide information for the purpose of deciding whether to commence an investigation, except for the powers in Part 2 of Schedule 1 which allow the Adjudicator to require pub-owning businesses to provide information about whether they have complied with a previous recommendation. This limit on the Adjudicator's information gathering powers does not prevent the Adjudicator from making contacts and receiving information voluntarily, so far as this is permitted by the general law.
321. It is not intended that the findings of an investigation need be limited to the possible breaches, or possible failure to follow a recommendation, that gave the Adjudicator reasonable grounds for suspicion as referred to in subsection (1).

Section 54: Investigation reports

322. This section requires the Adjudicator to publish a report at the end of an investigation.
323. Subsection (2) specifies that an investigation report must specify any findings and any action taken or proposed. The report does not have to disclose the identity of the pub-owning business in question. This is because there may be cases where the Adjudicator considers that the objectives of the Pubs Code can be effectively achieved whilst dealing with the relevant pub-owning business privately. If the Adjudicator does choose to identify the pub-owning business in an investigation report, the business must be given an opportunity to comment on a draft of that investigation report before it is published.
324. Where an investigation finds that a pub-owning business has failed to comply with the Pubs Code, and that failure has affected a particular tenant, the finding of the

investigation will not constitute a determination of liability of the pub-owning business to that tenant on which the tenant can rely. The tenant would need to make its own claim against the pub-owning business in order to obtain a remedy.

Section 55: Forms of enforcement

325. If the Adjudicator concludes following an investigation that a pub-owning business has failed to comply with the Pubs Code or has not followed a previous recommendation, the Adjudicator may make recommendations under section 56, require information to be published under section 57 or impose financial penalties under section 58. The Adjudicator may impose one or more of these enforcement measures. If more than one pub-owning business is the subject of an investigation, the Adjudicator may choose to impose different enforcement measures on different businesses and this may include choosing not to impose any enforcement measures on one or more businesses (subsection (2)).

Section 56: Recommendations

326. If the Adjudicator concludes that a pub-owning business has failed to comply with the Pubs Code, the Adjudicator can recommend what the pub-owning business should do to comply with the Pubs Code. The Adjudicator is then required to monitor whether recommendations are followed (subsection (2)) and report on this in the annual report under section 62. For the purposes of monitoring, pub-owning businesses can be required to provide information to the Adjudicator (see Part 2 of Schedule 1).
327. Recommendations are likely to be used in circumstances where the breach of the Pubs Code is less serious. They may also be used alongside a requirement to publish information or the imposition of financial penalties for more serious breaches of the Code. There is no express sanction for failure to comply with a recommendation, but failure to show that a recommendation has been followed could trigger a new investigation (see section 53) or be taken into account when considering what sanction to impose following a future investigation.

Section 57: Requirements to publish information

328. If the Adjudicator concludes that a pub-owning business has failed to comply with the Pubs Code, then the Adjudicator may require the pub-owning business to publish information about the Adjudicator's investigation. The Adjudicator will need to inform the pub-owning business in writing of the information required to be published, the manner in which it must be published and the time by which it must be published (subsection (2)). For example, the Adjudicator could require publication by press release, through the pub-owning business's annual report or website or through a newspaper advertisement. If necessary, the Adjudicator may take further legal steps to enforce his/her ruling (subsection (3)).

Section 58: Financial penalties

329. The Adjudicator may impose a financial penalty on a pub-owning business if, following an investigation, the Adjudicator concludes that the business has failed to comply with the Pubs Code. This penalty may not exceed the maximum penalty (see subsection (6)). The Adjudicator imposes a financial penalty by giving the pub-owning business written notice of the reasons for the penalty, the amount of the penalty, the period within which it must be paid and how it must be paid (subsection (2)).
330. The pub-owning business could appeal to the High Court against the imposition of the penalty or the amount of a penalty (subsection (3)). Subsection (5) states that financial penalties would be paid into the Consolidated Fund and so would not be used to support the Adjudicator's activities.

331. Subsection (6) states that the Secretary of State must make regulations specifying the permitted maximum financial penalty or how it is to be calculated.

Section 59: Recovery of investigation costs

332. This section provides that the Adjudicator may require a pub-owning business to pay some or all of the costs of an investigation if the Adjudicator finds that the pub-owning business has failed to comply with the Pubs Code or failed to follow a recommendation.
333. Subsection (2) states that where a person has made a complaint which was found to be vexatious or wholly without merit, the Adjudicator may require that person to pay some or all of the costs of a resulting investigation.
334. The Adjudicator must provide notice in writing to the person who is required to make a payment, informing them of the requirement to pay costs, the reasons for imposing the requirement, the amount to be paid, the time period within which it must be paid and how it must be paid (subsection (3)). The person required to pay may appeal against the decision or the amount to the High Court.