

# Tied Pubs (Scotland) Act 2021

2021 asp 17

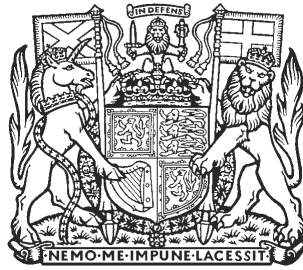
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Explanatory Notes have been produced to assist in the  
understanding of this Act and are available separately

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# Tied Pubs (Scotland) Act 2021

## 2021 asp 17

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# Tied Pubs (Scotland) Act 2021

## 2021 asp 17

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 23rd March 2021 and received Royal Assent on 5th May 2021**

An Act of the Scottish Parliament to establish a Scottish Pubs Code to govern the relationship between tenants and owners of tied pubs; to establish the office of Scottish Pubs Code Adjudicator; and for connected purposes.

### **PART 1**

#### THE CODE AND THE ADJUDICATOR

#### **1 Scottish Pubs Code**

- (1) The Scottish Ministers must, by regulations, impose requirements and restrictions on pub-owning businesses in connection with tied pubs.
- (2) Schedule 1 makes provision about the exercise of the power conferred by this section.

#### **2 Scottish Pubs Code Adjudicator**

- (1) The office of Scottish Pubs Code Adjudicator is established.
- (2) Schedule 2 makes provision about the office.

#### **3 Duty to act consistently with regulatory principles**

- (1) The Scottish Ministers must use their best endeavours to exercise the power conferred by section 1 consistently with the regulatory principles.
- (2) The adjudicator must use its best endeavours to carry out the adjudicator's functions consistently with the regulatory principles.
- (3) The regulatory principles are—
  - (a) the principle of fair and lawful dealing by pub-owning businesses in relation to their tied-pub tenants,
  - (b) the principle that tied-pub tenants should not be worse off than they would be if they were subject to neither a product tie nor a service tie,

- (c) the principle that any agreement between a pub-owning business and a tied-pub tenant should fairly share the risks and rewards amongst the parties.
- (4) In subsection (3)(b), “product tie” and “service tie” have the meaning given to them in paragraph 5(4) of schedule 1.

#### **4 Scottish Ministers’ duty to seek to make code and appoint adjudicator**

- (1) Before the end of the period of 2 years beginning with the day that this section comes into force, the Scottish Ministers must—
  - (a) lay before the Scottish Parliament for approval by resolution a draft Scottish statutory instrument containing regulations under section 1, and
  - (b) appoint a person to the office of Scottish Pubs Code Adjudicator.
- (2) For the avoidance of doubt, subsection (1) does not require the Scottish Ministers to do both of those things on the same day.
- (3) If the Scottish Parliament approves the draft instrument laid before it in accordance with subsection (1)(a), the Scottish Ministers must make the regulations contained in the draft instrument.
- (4) Having—
  - (a) made regulations under section 1, and
  - (b) appointed a person to the office of Scottish Pubs Code Adjudicator,the Scottish Ministers may by regulations repeal this section.

#### **5 Review of the code and adjudicator’s performance**

- (1) As soon as practicable after each review period, the Scottish Ministers must—
  - (a) prepare a report reviewing, over the period—
    - (i) the operation of the code, and
    - (ii) the adjudicator’s performance,
  - (b) make the report publicly available, and
  - (c) lay a copy of the report before the Scottish Parliament.
- (2) In reviewing the operation of the code, the Scottish Ministers must consider—
  - (a) the extent to which the code is consistent with the regulatory principles set out in section 3,
  - (b) whether the code could be modified to reflect those principles more fully.
- (3) In reviewing the adjudicator’s performance, the Scottish Ministers—
  - (a) must consider how effective the adjudicator has been in enforcing the code,
  - (b) may consider whether it would be desirable to modify any regulations under section 10 or 17,
  - (c) may consider any other matter the Ministers consider appropriate.

- (4) A review period—
  - (a) begins on 1 April in the calendar year that the preceding review period ended, and
  - (b) ends on 31 March in the calendar year falling 3 years after it began.
- (5) But the first review period—
  - (a) begins on the day that section 2 comes into force, and
  - (b) ends on 31 March in the calendar year falling 2 years after it began.

## **6 Ministerial guidance to the adjudicator**

- (1) As a result of the findings of a review under section 5, the Scottish Ministers may give guidance to the adjudicator about any matter relating to the functions of the adjudicator.
- (2) In carrying out the functions of the adjudicator, the adjudicator must take any guidance given under subsection (1) into account.

## **PART 2**

### GIVING EFFECT TO THE CODE

#### *Agreements that are inconsistent with the code*

## **7 Unenforceability of contract terms**

A term of an agreement between a pub-owning business and a tied-pub tenant is unenforceable by the business if the code provides that a pub-owning business is prohibited from enforcing a term of that kind.

#### *Investigation by the adjudicator*

## **8 Power to investigate**

- (1) The adjudicator may investigate a pub-owning business's compliance with the code if the adjudicator has reasonable grounds to suspect that the business has failed to comply with the code.
- (2) The adjudicator may not carry out an investigation until the statement required by section 13 has been made publicly available.

## **9 Enforcement action**

- (1) If, having carried out an investigation, the adjudicator is satisfied that a pub-owning business has failed to comply with the code, the adjudicator may take one or more of the enforcement actions mentioned in subsection (2).
- (2) The enforcement actions are—
  - (a) directing the business to do, or stop doing, something specified in order to comply with the code,
  - (b) directing the business to publish specified information relating to the investigation in a specified manner by a specified deadline,
  - (c) imposing a financial penalty on the business.

- (3) If the adjudicator gives a direction under paragraph (a) or (b) of subsection (2), the adjudicator must monitor whether the requirement to comply with it has been fulfilled.
- (4) In subsection (2), “specified” means specified in the direction given, in writing, to the pub-owning business by the adjudicator.

## **10 Financial penalties under section 9**

- (1) Liability to pay a financial penalty imposed under section 9 arises when the adjudicator gives a person a notice in writing that states—
  - (a) that the adjudicator is imposing a penalty on the person under section 9,
  - (b) the reason the adjudicator is doing so,
  - (c) the amount of the penalty,
  - (d) the period within which it must be paid,
  - (e) how it must be paid.
- (2) A financial penalty imposed under section 9 may not exceed the permitted maximum.
- (3) The Scottish Ministers are to define the permitted maximum by regulations.
- (4) The permitted maximum may be defined by—
  - (a) specifying it as an amount, or
  - (b) setting out a methodology by which it is to be determined.
- (5) Financial penalties received by the adjudicator must be paid into the Scottish Consolidated Fund.
- (6) A person on whom a financial penalty is imposed under section 9 may appeal to the sheriff against—
  - (a) the imposition of the penalty,
  - (b) the amount of the penalty.

## **11 Investigation report**

- (1) Having carried out an investigation into a pub-owning business’s compliance with the code, the adjudicator must publish a report on the investigation.
- (2) A report must state—
  - (a) the adjudicator’s findings and the reasons for them,
  - (b) what enforcement action (if any) the adjudicator has taken or intends to take and the reasons for that decision.
- (3) A report need not identify the investigated pub-owning business.
- (4) If the adjudicator intends to identify the investigated pub-owning business in a report, the adjudicator must give the business a reasonable opportunity to comment on a draft of the report before publishing it.



## **12 Recovery of investigation costs**

- (1) The adjudicator may require a pub-owning business to pay to the adjudicator some or all of the costs of an investigation if, at the end of the investigation, the adjudicator's finding is that the business has failed to comply with the code.
- (2) The adjudicator may require a person to pay to the adjudicator some or all of the costs of an investigation if—
  - (a) the investigation was initiated as a result of a complaint made by the person, and
  - (b) the adjudicator is satisfied that the complaint was vexatious or wholly without merit.
- (3) Liability to make a payment required under subsection (1) or (2) arises when the adjudicator gives a person a notice in writing that states—
  - (a) that the adjudicator is requiring the person to make a payment in respect of the costs of an investigation,
  - (b) the reason the adjudicator is doing so,
  - (c) the amount of the required payment,
  - (d) the period within which it must be paid,
  - (e) how it must be paid.
- (4) The total value of payments required under this section in respect of an investigation must not exceed the adjudicator's costs in—
  - (a) carrying out the investigation, and
  - (b) taking enforcement action at the end of the investigation.
- (5) A person required to make a payment under subsection (1) or (2) may appeal to the sheriff against—
  - (a) the imposition of any such requirement,
  - (b) the amount the person is being required to pay.

## **13 Investigation policy**

- (1) The adjudicator must make publicly available a statement about—
  - (a) the criteria that the adjudicator will adopt in deciding whether to carry out an investigation under section 8,
  - (b) the practices and procedures that the adjudicator will follow in carrying out an investigation under that section,
  - (c) the criteria that the adjudicator will adopt in deciding—
    - (i) whether to take enforcement action under section 9, and
    - (ii) what type of action to take,
  - (d) the criteria that the adjudicator will use in setting the amount of a financial penalty imposed under section 9.
- (2) The adjudicator must, in drawing up the criteria mentioned in paragraphs (a), (c) and (d) of subsection (1), have regard to the impact the behaviour of tied-pub tenants may have on compliance with the code by pub-owning businesses.

- (3) The criteria mentioned in subsection (1)(a) must include time limits, which may be set by reference to the suspected failure to comply with the code or otherwise, after the expiry of which an investigation may not be initiated.
- (4) The adjudicator must take the statement into account in carrying out the functions to which it relates.
- (5) The adjudicator may modify the statement at any time.
- (6) Before preparing or modifying the statement, the adjudicator must consult any person the adjudicator considers it appropriate to consult.

#### *Arbitration*

### **14 Adjudicator’s duty to arbitrate or appoint arbitrator**

- (1) The adjudicator must act as the arbitrator in relation to a dispute, or appoint another person to do so, if the dispute—
  - (a) is between a tied-pub tenant and a pub-owning business,
  - (b) is about whether the business has complied with a term of the code, other than an excluded term, and
  - (c) is submitted to the adjudicator for arbitration either—
    - (i) under section 15, or
    - (ii) in accordance with an agreement between the parties to the dispute.
- (2) Where the adjudicator or a person appointed by the adjudicator is, by virtue of subsection (1), the arbitrator in an arbitration, the arbitration must be conducted in accordance with—
  - (a) the rules regarding arbitration issued from time to time by the Chartered Institute of Arbitrators, or
  - (b) the rules of another dispute resolution body nominated by the arbitrator.
- (3) In subsection (1)(b), “excluded term” means a provision of the code that regulations made by the Scottish Ministers state cannot be the subject of arbitration before the adjudicator.

### **15 Submission of dispute to adjudicator**

- (1) A dispute may be submitted to arbitration under this section by—
  - (a) a tied-pub tenant, or
  - (b) a pub-owning business.
- (2) But a dispute may be submitted to arbitration under this section only if—
  - (a) the tenant notified the business of the alleged failure to comply with the code that is the subject of the dispute within the period specified in subsection (3), and
  - (b) the dispute is submitted within the period of 4 months beginning with the day falling 21 days after the business was notified.
- (3) The period referred to in subsection (2)(a) is the period of 6 months, beginning with—
  - (a) the day on which the alleged failure to comply with the code occurred,

- (b) where the alleged failure was a continuing one, the day on which the failure ceased, or
  - (c) the day on which the tenant became, or could reasonably be expected to have become, aware of the alleged failure, if later than the day mentioned in paragraph (a) or (as the case may be) (b).
- (4) If—
- (a) the 4 month period mentioned in subsection (2)(b) or the 6 month period mentioned in subsection (3) begins on the 29th, 30th or 31st of a month, and
  - (b) there is no corresponding day in the month falling 4 or (as the case may be) 6 months later,

the period expires on the last day of that month.

## **16 Liability for arbitrator's reasonable fees and expenses**

- (1) A pub-owning business that is a party to an arbitration is liable to pay the arbitrator's reasonable fees and expenses if, by virtue of section 14(1), the arbitrator is the adjudicator or a person appointed by the adjudicator.
- (2) But a pub-owning business has no liability under subsection (1) if—
  - (a) the arbitration began as a result of a tied-pub tenant submitting a dispute to arbitration under section 15, and
  - (b) the arbitrator concludes that the submission of the dispute to arbitration was vexatious.
- (3) The adjudicator may, on the request of the pub-owning business and having regard to the circumstances of the arbitration and the dispute submitted to it—
  - (a) relieve the business in whole or in part of the liability under subsection (1),
  - (b) determine that a tied-pub tenant who is a party to the arbitration is instead liable to pay so much of the arbitrator's reasonable fees and expenses as the adjudicator considers appropriate.

## **17 Further fees and expenses payable to the adjudicator**

- (1) The Scottish Ministers must by regulations provide for a fee to be paid to the adjudicator by a tied-pub tenant in respect of an arbitration to which subsection (2) applies (subject to any exceptions specified in the regulations).
- (2) This subsection applies to an arbitration if the adjudicator, or a person appointed by the adjudicator, is the arbitrator as a result of a tied-pub tenant submitting a dispute to arbitration under section 15.
- (3) Regulations under subsection (1) may in particular prescribe—
  - (a) the fee to be paid,
  - (b) circumstances in which a tenant need not pay a fee,
  - (c) circumstances in which a fee is to be refunded.
- (4) The Scottish Ministers may by regulations require a tied-pub tenant to make a payment to the adjudicator in respect of the expenses of an arbitration to which subsection (5) applies.

- (5) This subsection applies to an arbitration if the adjudicator, or a person appointed by the adjudicator, is the arbitrator by virtue of section 14(1).
- (6) Regulations under subsection (4) may in particular—
  - (a) specify the circumstances in which a tenant may be required to make a payment in respect of expenses,
  - (b) set a limit on the amount a tenant may ordinarily be required to pay in respect of expenses (either by specifying an amount or setting out a methodology by which the amount is to be determined),
  - (c) specify circumstances in which a tenant may be required to make a payment in respect of expenses that exceeds the limit that ordinarily applies.

## **18 Information about arbitration**

- (1) Where, by virtue of section 14(1), the adjudicator appoints a person to act as the arbitrator in an arbitration, the adjudicator may require—
  - (a) that person, and
  - (b) any party to the arbitration,
 to provide the adjudicator with information about the arbitration for the purpose of assisting the adjudicator in carrying out the functions of the adjudicator.
- (2) A requirement under subsection (1) may be enforced, on an application by the adjudicator to the Court of Session, by an order of specific implement.

### *Avoidance*

## **19 Reports on avoidance**

- (1) The adjudicator must report to the Scottish Ministers on cases of pub-owning businesses engaging in avoidance activity.
- (2) In subsection (1), “avoidance activity” means acts or omissions (or both) by a pub-owning business that are—
  - (a) unfair, and
  - (b) engaged in by the business in order to avoid, to the detriment of a tied-pub tenant, the operation of provision made by or under this Act.
- (3) A report under subsection (1) must include recommendations as to—
  - (a) action to be taken to prevent pub-owning businesses from engaging in the activity reported on, and
  - (b) how to provide redress for tied-pub tenants affected by those activities.
- (4) Within 3 months of receiving a report under subsection (1), the Scottish Ministers must make publicly available a statement setting out—
  - (a) what action they intend to take to protect tied-pub tenants from the activities reported on by the adjudicator, or
  - (b) if they do not intend to take any such action, the reasons for that decision.

**PART 3**

INTERPRETATION

**20 Tied pub**

- (1) In this Act, “tied pub” means a pub which is being leased to a tenant who is subject to a contractual obligation which—
  - (a) requires that some or all of the alcohol to be sold in the pub be supplied by—
    - (i) the landlord of the pub, or
    - (ii) a person nominated by the landlord, and
  - (b) is not a stocking requirement.
- (2) In subsection (1)(b), “stocking requirement” means a contractual obligation which—
  - (a) requires that some of the beer or cider (or both) that is to be sold in the pub is produced by the landlord,
  - (b) does not require the tenant to procure that beer or cider from a particular supplier, and
  - (c) neither prevents the tenant from, nor penalises the tenant for, selling in the pub beer or cider that is produced by a person other than the landlord (although a contract term may impose restrictions on such sales).
- (3) References in this section to the landlord of a pub includes any person who is a group undertaking in relation to the person who is actually the landlord.

**21 Pub-owning business and tied-pub tenant**

- (1) In this Act, “pub-owning business” means (subject to subsection (2)) the landlord under the lease of a tied pub.
- (2) References in this Act to—
  - (a) a pub-owning business include a person who has been a pub-owning business,
  - (b) a tied-pub tenant include a person who has been the tenant under the lease of a tied pub.

**22 Other expressions**

In this Act—

“adjudicator” means the Scottish Pubs Code Adjudicator,

“beer” and “cider” have the meanings given in section 1 of the Alcoholic Liquor Duties Act 1979,

“code” means the regulations under section 1,

“group undertaking” has the meaning given by section 1161 of the Companies Act 2006,

“pub” means premises—

- (a) in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005 has effect, and

- (b) in which the main activity (or one of the main activities) carried on is the sale of alcohol to members of the public for consumption on the premises.

## **PART 4**

### FINAL PROVISIONS

#### **23 Ancillary provision**

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, or in connection with, or for giving full effect to this Act or any provision made under it.
- (2) Regulations under this section may modify any enactment (including this Act).

#### **24 Regulation-making powers**

- (1) A power to make regulations conferred by this Act includes the power to make different provision for different purposes.
- (2) Regulations under any of the following provisions are subject to the affirmative procedure: sections 1, 10, 14 and 17.
- (3) Regulations under section 23—
  - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act), but
  - (b) otherwise are subject to the negative procedure.

#### **25 Commencement**

- (1) The following provisions of this Act come into force on the day after Royal Assent—
  - (a) in Part 1, sections 3, 4 and 5,
  - (b) Part 3,
  - (c) this Part.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

#### **26 Short title**

The short title of this Act is the Tied Pubs (Scotland) Act 2021.

SCHEDULE 1  
*(introduced by section 1)*

THE SCOTTISH PUBS CODE

*Requirement to provide information*

- 1 (1) The code may require pub-owning businesses to produce information and provide it to—
  - (a) tenants of tied pubs,
  - (b) prospective tenants of tied pubs,
  - (c) the adjudicator.
- (2) For example, the code may require pub-owning businesses to provide tenants with rent assessments.
- (3) The code may impose requirements on pub-owning businesses as to—
  - (a) the methodology by which information that is to be provided in accordance with the code is to be produced, and
  - (b) the manner and form in which the information is to be provided.
- (4) Requirements of the kind mentioned in sub-paragraph (3) may be specified in the code by reference to documents described in the code (including documents that do not exist at the time the provision of the code referring to them is made).

*Requirement to comply with adjudicator's directions following an investigation*

- 2 The code must provide that a pub-owning business is required to comply with a direction given to it under paragraph (a) or (b) of section 9(2).

*Restriction on enforcing certain terms of agreement*

- 3 (1) The code—
  - (a) must provide that a pub-owning business is prohibited from enforcing a term of an agreement of a kind described in sub-paragraph (2),
  - (b) may provide that a pub-owning business is prohibited from enforcing a term of an agreement of any other kind that is described in the code.
- (2) The following are the kinds of term referred to in sub-paragraph (1)(a)—
  - (a) a term under which a tied-pub tenant is prevented from, or can be penalised for, taking action to enforce the code,
  - (b) a term which provides that a rent assessment in relation to the tied pub—
    - (i) may be initiated only by the business,
    - (ii) may only determine that the rent is to be increased,
    - (iii) may not determine that the rent is to be reduced.

*Requirement to offer guest beer agreement*

- 4 (1) The code must require a pub-owning business to offer to enter into a guest beer agreement with a tied-pub tenant in certain circumstances.
- (2) The code is to specify the circumstances in which the offer must be made.
- (3) A guest beer agreement is an agreement that—
- (a) allows a tied-pub tenant to—
    - (i) sell to the pub’s customers, at a price of the tenant’s choosing, at least one beer chosen by the tenant (regardless of who produces it), and
    - (ii) change the chosen beer as frequently as the tenant wishes,
  - (b) allows the tenant to do those things without penalty, and
  - (c) satisfies any other criteria specified in the code.

*Requirement to offer market rent only lease*

- 5 (1) The code must require a pub-owning business—
- (a) to offer to enter into a market rent only lease with a tied-pub tenant who requests that the offer be made (but see sub-paragraph (3)(b)),
  - (b) to make that offer by offering to modify the terms of any existing agreement only to the extent that is necessary for the lease in relation to the pub to be a market rent only lease (but see sub-paragraph (3)(c)),
  - (c) to use its best endeavours to enter into a market rent only lease with the tenant as soon as possible following the tenant’s request that the business offer to enter into such a lease.
- (2) A market rent only lease means a lease that—
- (a) sets the rent payable in respect of the tenant’s occupation of the pub at—
    - (i) an amount agreed between the landlord and the tenant in accordance with a procedure described in the code, or
    - (ii) in the event that no agreement is reached in accordance with that procedure, the market rent,
  - (b) imposes neither a product tie nor a service tie in relation to the pub,
  - (c) complies with any requirements set out in the code as to the terms that a lease must contain in order to be a market rent only lease, and
  - (d) does not contain any unreasonable terms.
- (3) The code may specify—
- (a) descriptions of terms that are to be regarded as unreasonable for the purpose of determining whether a lease is a market rent only lease,
  - (b) circumstances in which a pub-owning business need not offer to enter into a market rent only lease with a tied-pub tenant (including, for example, where an agreement to invest in a tied pub has been entered into),



- (c) circumstances in which a pub-owning business—
  - (i) need not offer a market rent only lease by making an offer in the terms described by sub-paragraph (1)(b), but
  - (ii) may make the offer in another way (including by offering to modify the terms of an existing agreement in a way other than that so described or by offering to enter into a new lease).
- (4) In this paragraph—
  - “lease” includes any agreement between the landlord and the tenant of a pub that relates to the tenant’s occupation of the pub or the activities carried on in the pub,
  - “market rent” means the estimated rent which it would be reasonable to pay in respect of the occupation of the pub under a tenancy, assuming that—
    - (a) the hypothetical tenancy is entered into—
      - (i) on the date the estimate of the rent is being carried out,
      - (ii) in an arm’s length transaction,
      - (iii) after proper marketing,
      - (iv) between parties who are all acting knowledgeably, prudently and willingly, and
    - (b) the pub will continue to be a pub,
  - “product tie” means a contractual obligation which—
    - (a) requires that a product to be sold in a pub must be supplied by—
      - (i) the landlord of the pub, or
      - (ii) a person nominated by the landlord, and
    - (b) is not a stocking requirement (as defined in section 20(2)),
  - “service tie” means a contractual obligation which requires that the tenant of a pub receive a service, other than insurance, from—
    - (a) the landlord of the pub, or
    - (b) a person nominated by the landlord.
- (5) References in sub-paragraph (4) to the landlord of a pub includes any person who is a group undertaking in relation to the person who is actually the landlord.

*Market rent only lease: further provision*

- 6 In describing the procedure mentioned in paragraph 5(2)(a), the code may in particular—
- (a) specify a period for negotiation under the procedure,
  - (b) require that a person (referred to in this paragraph as a rent assessor) be appointed to determine the market rent in the event that no agreement is reached by the end of any negotiation period the code specifies,
  - (c) require that a rent assessor be appointed—
    - (i) by the pub-owning business and the tied-pub tenant acting jointly, or

- (ii) in the event that they cannot agree, by the adjudicator,
- (d) require that the adjudicator set criteria that a person must meet in order to be appointed as a rent assessor,
- (e) require that the rent assessor determine the market rent within a period specified in the code.

*Generality of enabling power unaffected*

- 7 Nothing in this schedule is to be taken to limit the requirements and restrictions that may be imposed on pub-owning businesses by regulations under section 1.

SCHEDULE 2  
*(introduced by section 2)*

SCOTTISH PUBS CODE ADJUDICATOR

**PART 1**

STATUS AND LIABILITY

*Legal personality*

- 1 The adjudicator is, as such, to be regarded as a juristic person distinct from the person holding the office.

*Exclusion of Crown Status*

- 2 (1) The adjudicator—
- (a) is not a servant or agent of the Crown, and
  - (b) does not enjoy any status, immunity or privilege of the Crown.
- (2) Individuals working as the adjudicator’s staff are not, on that account, to be regarded as civil servants.

*Exemption from liability for damages*

- 3 (1) The following are exempt from liability in damages for any act or omission in the exercise (or purported exercise) of their functions—
- (a) the adjudicator,
  - (b) persons working as the adjudicator’s staff.
- (2) Sub-paragraph (1) does not exempt a person from liability for doing, or not doing, something that is shown to have been done, or as the case may be not done, in bad faith.
- (3) Sub-paragraph (1) does not prevent an award of damages being made in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights Act 1998.

**PART 2**

**POWERS**

**CHAPTER 1**

**POWER TO REQUIRE INFORMATION**

*Imposition of requirement*

- 4 (1) The adjudicator may, for a purpose mentioned in sub-paragraph (2), require a person to provide information that is in the person's possession or control.
- (2) The purposes referred to in sub-paragraph (1) are—
- (a) investigating a pub-owning business's compliance with the code,
  - (b) monitoring whether the requirement to comply with a direction given under section 9(2)(a) has been fulfilled,
  - (c) exercising functions in relation to the offer of a market rent only lease.
- (3) A requirement under this paragraph to provide information may, in particular, be a requirement to—
- (a) provide documents,
  - (b) provide information verbally.
- (4) A requirement under this paragraph is imposed on a person by giving the person written notice—
- (a) specifying—
    - (i) the information the person is required to provide, and
    - (ii) the way in which the person is required to provide it, and
  - (b) explaining that failing to comply with the requirement or providing false information in response to it may be an offence under this Chapter.
- (5) For the purpose of sub-paragraph (4)(a)(ii), specifying the way in which a person is required to provide information includes specifying—
- (a) to whom it is to be provided,
  - (b) where it is to be provided,
  - (c) when, or the time by which, it is to be provided,
  - (d) the form and manner in which it is to be provided.
- (6) If an individual is required to attend a particular place under this paragraph, the adjudicator must offer to pay any necessary travelling expenses.
- (7) A person may not be required under this paragraph to do anything that the person could not be compelled to do in proceedings before the Court of Session.

*Offence of failing to comply with requirement*

- 5 (1) A person commits an offence if—
- (a) the person intentionally fails to comply with a requirement under paragraph 4 to provide information, and
  - (b) the person does not have a reasonable excuse for failing to comply.
- (2) For the purpose of sub-paragraph (1)(a), a person is not to be regarded as having complied with a requirement under paragraph 4 to provide information unless the person provided the information in the way specified in the notice imposing the requirement.
- (3) A person who commits an offence under sub-paragraph (1) is liable, on conviction, to a fine.
- (4) On summary conviction, the fine may not exceed the statutory maximum.

*Offence of providing false information*

- 6 (1) A person commits an offence if, in response to a requirement under paragraph 4 to provide information, the person knowingly provides false information.
- (2) A person who commits an offence under sub-paragraph (1) is liable, on conviction, to a fine.
- (3) On summary conviction, the fine may not exceed the statutory maximum.

## CHAPTER 2

### OTHER POWERS

*Power to advise on the code*

- 7 The adjudicator may give any person advice on any matter relating to the code.

*Power to issue guidance*

- 8 (1) The adjudicator may prepare and make publicly available guidance about—
- (a) the practices and procedures that the adjudicator intends to adopt in carrying out the functions of the adjudicator,
  - (b) the application of the code (or any provision of it),
  - (c) steps that pub-owning businesses need to take in order to comply with the code,
  - (d) any other matter relating to the code.
- (2) The adjudicator must take any guidance that is being made publicly available by virtue of sub-paragraph (1) into account when exercising a function to which the guidance relates.
- (3) Before preparing any guidance, the adjudicator must consult any person the adjudicator considers it appropriate to consult.

- 9 The adjudicator may do anything which appears to the adjudicator to be—
- (a) necessary or expedient for the purposes of, or in connection with, the performance of the functions of the adjudicator, or
  - (b) otherwise conducive to the performance of those functions.

### **PART 3**

#### **FUNDING AND OTHER SUPPORT**

#### **CHAPTER 1**

##### **ASSISTANCE FROM THE SCOTTISH MINISTERS**

###### *Loans*

- 10 The Scottish Ministers may—
- (a) give loans to the adjudicator, and
  - (b) attach conditions (including conditions as to repayment and the payment of interest) to any loan given.

###### *Other assistance*

- 11 The Scottish Ministers may provide staff, premises, facilities or other assistance to the adjudicator (with or without charge).

### **CHAPTER 2**

#### **LEVY FUNDING**

###### *Annual levy on pub-owning businesses*

- 12 (1) The adjudicator may impose a levy in respect of a financial year on any person who is, or was, a pub-owning business during the year.
- (2) But the levy may only be imposed in respect of a financial year if the Scottish Ministers have consented to its being imposed in respect of that year.

###### *Amount of levy*

- 13 (1) The rate at which a person is to be charged the levy in respect of a financial year is to be set by the adjudicator.
- (2) The adjudicator may set different rates for different persons or descriptions of person.
- (3) Any difference in the rate must be based on criteria broadly intended to reflect the expenses that the adjudicator has incurred, or expects to incur, in dealing with matters relating to different pub-owning businesses.
- (4) The adjudicator is to set the rate (or rates) on the basis that the levy's purpose is to contribute towards meeting the adjudicator's expenses.

- (5) In setting the rate (or rates) the adjudicator—
- (a) must take into account any sums received or expected to be received from sources other than levy payments, and
  - (b) may take into account estimated as well as actual expenses.
- (6) Having set the rate (or rates) for a financial year, the adjudicator must make publicly available—
- (a) a statement of the rate (or rates) set,
  - (b) an explanation of the basis on which the rate setting was done, and
  - (c) if different rates are set, a statement of the criteria referred to in sub-paragraph (3) on the basis of which those rates were set.
- (7) For the purposes of this paragraph, “expenses” includes payments made by virtue of paragraphs 23 and 25(2).

#### *Liability to pay*

- 14 (1) A person is liable to pay the adjudicator the chargeable amount in respect of a financial year if—
- (a) the person is a person upon whom the levy may be imposed in respect of the year, and
  - (b) the person has received a charging notice from the adjudicator in respect of the year.
- (2) In this paragraph—
- “chargeable amount” means the rate at which the person is to be charged the levy in respect of the financial year,
  - “charging notice” means a notice setting out—
    - (a) the chargeable amount,
    - (b) when it is to be paid,
    - (c) how it is to be paid.

#### *Rebate*

- 15 (1) If, having collected the levy in respect of a financial year, the adjudicator has a surplus, the adjudicator may repay some or all of it to pub-owning businesses.
- (2) In sub-paragraph (1), “surplus” means the money held by the adjudicator at the end of a financial year, less the liabilities shown in the adjudicator’s statement of accounts for the year.

#### *Appeals*

- 16 A person on whom a levy is imposed under paragraph 12 may appeal to the sheriff against—
- (a) the imposition of the levy,

- (b) the amount of the levy.

#### **PART 4**

##### ACCOUNTABILITY

###### *Accounts and audit*

- 17 (1) The adjudicator must—
  - (a) keep proper accounts and accounting records,
  - (b) prepare in respect of each financial year a statement of accounts,
  - (c) send a copy of the statement to the Auditor General for Scotland for auditing.
- (2) The adjudicator must comply with any direction which the Scottish Ministers give it in relation to the matters mentioned in sub-paragraph (1)(a) and (b).

###### *Annual report*

- 18 (1) The adjudicator must, after each financial year—
  - (a) prepare and make publicly available a report of its activities during the year, and
  - (b) send a copy of the report to the Scottish Ministers.
- (2) The Scottish Ministers are to lay before the Scottish Parliament a copy of each report received by them under sub-paragraph (1).
- (3) A report under sub-paragraph (1) must include—
  - (a) a summary of—
    - (i) arbitrations conducted by the adjudicator,
    - (ii) investigations carried out by the adjudicator,
    - (iii) cases in which, at the end of an investigation, the adjudicator has taken enforcement action,
    - (iv) cases in which the adjudicator has exercised functions in relation to the offer of a market rent only lease,
  - (b) if the adjudicator has been monitoring whether the requirement to comply with a direction given under paragraph (a) or (b) of section 9(2) has been fulfilled, an assessment about whether or not it has been.

###### *Information to Scottish Ministers*

- 19 The adjudicator must provide the Scottish Ministers with any information they require for the purpose of carrying out their functions under this Act.

## PART 5

### APPOINTMENT AND TERMS AND CONDITIONS

#### *Appointment*

- 20 (1) The adjudicator is to be appointed by the Scottish Ministers.
- (2) In deciding whom to appoint, the Scottish Ministers must have particular regard to the importance of the adjudicator being impartial in balancing the interests of pub-owning businesses and tied-pub tenants.
- (3) The Scottish Ministers may not appoint a person unless the Scottish Parliament has, by resolution, approved the Ministers doing so.
- (4) The Scottish Ministers may not appoint the same individual to the office on more than 3 occasions.

#### *Tenure*

- 21 (1) A person holds the office of Scottish Pubs Code Adjudicator until—
- (a) the end of the period of appointment,
- (b) the person resigns by giving written notice to the Scottish Ministers,
- (c) the Scottish Ministers remove the person from the office on any of the following grounds—
- (i) the person is unable, unwilling or unfit to perform the functions of the office,
- (ii) there was a defect in the person's appointment to the office,
- (iii) the person was appointed to the office on the basis that the person held, and would continue to hold, another office or position and the person has ceased to hold that office or position.
- (2) In sub-paragraph (1)(a), “the period of appointment” means the period specified by the Scottish Ministers on appointing the person to the office.
- (3) When appointing a person to the office the Scottish Ministers—
- (a) must specify a period of appointment,
- (b) may not specify a period of appointment that is longer than—
- (i) 4 years beginning with the day that the appointment takes effect, if it is the first time the person has been appointed to the office, or
- (ii) 3 years beginning with the day that the appointment takes effect, if the person has previously been appointed to the office.

#### *Defect in appointment*

- 22 (1) A person's appointment to the office of Scottish Pubs Code Adjudicator is not void on account of any defect in the appointment.
- (2) If it comes to the Scottish Ministers' attention that there was a defect in the person's appointment to the office, the Scottish Ministers must remove the person from the office as soon as reasonably practicable.



- (3) Sub-paragraph (4) applies to an appointment to the office in the event that—
  - (a) the appointment is a re-appointment of an individual who was removed from the office in accordance with sub-paragraph (2), and
  - (b) no other person has been appointed to the office in the period between the individual's removal and re-appointment.
- (4) If this sub-paragraph applies to an appointment—
  - (a) the appointment is not to be counted for the purpose of paragraph 20(4), and
  - (b) the maximum period of appointment that the Scottish Ministers may specify is whatever was left of the individual's last period of appointment immediately before the individual was removed from the office.
- (5) For the purpose of sub-paragraph (4)(b), if the defect in the person's last appointment to the office was that a longer period of appointment was specified than paragraph 21(3)(b) permits, the last specified period of appointment is to be treated as the maximum permitted period.

#### *Remuneration*

- 23 The adjudicator may, in accordance with a determination by the Scottish Ministers, pay to, or in respect of, the person holding the office of Scottish Pubs Code Adjudicator—
- (a) remuneration,
  - (b) allowances (including expenses),
  - (c) sums by way of, or in respect of, pensions.

#### *Other terms and conditions*

- 24 The Scottish Ministers may determine the terms and conditions of the adjudicator in relation to matters not covered by this schedule.

## **PART 6**

### **STAFF**

#### *Secondees*

- 25 (1) The adjudicator may make arrangements for persons to be seconded to the adjudicator to serve as members of the adjudicator's staff.
- (2) The arrangements may include provision for payments by the adjudicator to either or both—
- (a) the person with whom the arrangements are made,
  - (b) the person seconded to the adjudicator's staff.
- (3) Before making arrangements under sub-paragraph (1), the adjudicator's policies on the following matters must be approved by the Scottish Ministers—
- (a) the number of staff to be seconded,

- (b) payments to be made to, or in respect of, seconded staff,
  - (c) the terms and conditions on which staff are to be seconded.
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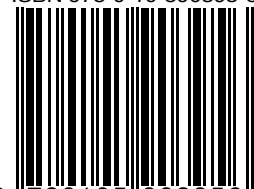
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