



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.

PROSPECTIVE

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—

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- (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—

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- (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.

PROSPECTIVE

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.

PROSPECTIVE

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.

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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,

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(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,