

TIED PUBS (SCOTLAND) ACT 2021

EXPLANATORY NOTES

THE ACT

Part 2: Giving Effect to the Code

Arbitration

Section 14: Adjudicator's duty to arbitrate or appoint arbitrator

37. This section requires the adjudicator to act as arbitrator, or appoint another person to do so, if there is a dispute between a tied-pub tenant and a pub-owning company about whether the business has complied with a non-excluded term of the code and if the dispute is submitted for arbitration either under section 15 (see below) or in accordance with an agreement between the tenant and pub-owning company.
38. In most circumstances, the adjudicator is expected to arbitrate such disputes. However, the adjudicator is also able to appoint another person to do so if, for example, the adjudicator does not have enough time to act as the arbitrator (due to caseload volume), or because the adjudicator considers that 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).
39. Subsection (2) confirms that arbitration proceedings must be conducted in accordance with the rules of the Chartered Institute of Arbitrators or any other dispute resolution body nominated by the arbitrator. This will ensure that arbitrations are conducted in line with recognised sectoral rules and guidelines.
40. Subsection (3) gives the Scottish Ministers power to make regulations to exclude a term, or terms, of the code from being subject to arbitration by the adjudicator. Under section 24, any such regulations are subject to the affirmative procedure in the Scottish Parliament, which means that they must be laid in draft for approval by the Parliament.