

TIED PUBS (SCOTLAND) ACT 2021

EXPLANATORY NOTES

THE ACT

Schedule 2: Scottish Pubs Code Adjudicator

Part 3: Funding and other support

Chapter 2: Levy funding

Annual levy on pub-owning businesses

88. The adjudicator is to be funded primarily¹ by means of a levy on pub-owning businesses.
89. Paragraph 12(1) specifies that the levy for any particular financial year is payable by any person (legal or natural) who is or was a pub-owning business during that financial year. Accordingly, a business that ceased to qualify as a pub-owning business mid-way through the year would still be liable to pay the levy.
90. Paragraph 12(2) states that the adjudicator can only impose a levy in a financial year if the Scottish Ministers have given their approval. Requiring the consent of Scottish Ministers ensures that the levy is subject to a level of scrutiny and accountability and cannot be determined solely by the adjudicator.

Amount of levy

91. Under paragraph 13, the adjudicator can decide what proportion of the levy will be imposed on each pub-owning business in each financial year. If the adjudicator charges different pub-owning businesses different amounts, the differences must be based on the expenses the adjudicator has incurred, or expects to incur, dealing with relevant matters. Sub-paragraph (7) confirms that “expenses” includes the payroll of the adjudicator and any staff. In this way, a pub-owning business that is regularly accused of breaching the code, thus generating a significant case-load for the adjudicator, is liable to be charged more than a business that maintains good relations with its tenants and does not generate work for the adjudicator.
92. Sub-paragraph (5) requires the adjudicator to take account of non-levy income when setting the levy rate (or rates). This is to ensure that the levy provides necessary funding only. The sub-paragraph also allows the adjudicator to take account of estimated expenditure when setting the levy rate (or rates).
93. Sub-paragraph (6) states that the adjudicator must publish details of the levy, including the rate (or rates) set, and an explanation of how the rate-setting was done, including how variations among the workload generated by different pub-owning businesses were used to decide the different rates those business must pay. This will ensure transparency

¹ Some funding may also come via fees and/or payments from tenants (such as via fees payable for requesting a Market Rent Only lease, and costs of arbitration and investigation processes, in certain circumstances).

*These notes relate to the Tied Pubs (Scotland) Act 2021
(asp 17) which received Royal Assent on 5 May 2021*

in the total levy amount, the separate amounts for each pub-owning business, and the methodology used.

Liability to pay

94. Paragraph 14 makes pub-owning businesses liable to pay the rates set if they are generally liable to pay the levy in the relevant year and have received a charging notice. So, for example, a business that had ceased to be a pub-owning business before the year in question would not be liable to pay the levy even if it had received a charging notice. Under sub-paragraph (2), a charging notice may specify not just how much is to be paid but also when and how it is to be paid.

Rebate

95. Paragraph 15 confirms that any surplus funds held by the adjudicator at the end of a financial year may be repaid (in full or in part) to the relevant pub-owning businesses.
96. This prevents the adjudicator building up more funds than are needed to operate the adjudicator's office and meet its expenses and ensures that pub-owning businesses have a financial incentive to reduce the number of complaints to the adjudicator.

Appeals

97. Under paragraph 16 the imposition and/or amount of the annual levy on a pub-owning business may be appealed to the sheriff. Under existing legislation, the sheriff's decision may be further appealed to the Sheriff Appeal Court.