



# Tied Pubs (Scotland) Act 2021

## 2021 asp 17

### PART 2

#### GIVING EFFECT TO THE CODE

PROSPECTIVE

#### *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—

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*Status: This version of this cross heading contains provisions that are prospective.*

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- (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).

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- (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.

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