



Tied Pubs (Scotland) Act 2021

2021 asp 17

PART 2

GIVING EFFECT TO THE CODE

PROSPECTIVE

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.

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

Changes to legislation: There are currently no known outstanding effects for the Tied Pubs (Scotland) Act 2021, Cross Heading: Investigation by the adjudicator. (See end of Document for details)

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.

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- (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.

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