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PROSPECTIVE

## SCHEDULE 2 **S**

(introduced by section 2)

### SCOTTISH PUBS CODE ADJUDICATOR

#### PART 1 **S**

##### STATUS AND LIABILITY

###### *Legal personality*

- 1 The adjudicator is, as such, to be regarded as a juristic person distinct from the person holding the office.

###### *Exclusion of Crown Status*

- 2 (1) The adjudicator—  
(a) is not a servant or agent of the Crown, and  
(b) does not enjoy any status, immunity or privilege of the Crown.  
(2) Individuals working as the adjudicator's staff are not, on that account, to be regarded as civil servants.

###### *Exemption from liability for damages*

- 3 (1) The following are exempt from liability in damages for any act or omission in the exercise (or purported exercise) of their functions—  
(a) the adjudicator,  
(b) persons working as the adjudicator's staff.  
(2) Sub-paragraph (1) does not exempt a person from liability for doing, or not doing, something that is shown to have been done, or as the case may be not done, in bad faith.  
(3) Sub-paragraph (1) does not prevent an award of damages being made in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights Act 1998.

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## PART 2 S

### POWERS

#### CHAPTER 1 S

##### POWER TO REQUIRE INFORMATION

###### *Imposition of requirement*

- 4 (1) The adjudicator may, for a purpose mentioned in sub-paragraph (2), require a person to provide information that is in the person's possession or control.
- (2) The purposes referred to in sub-paragraph (1) are—
- (a) investigating a pub-owning business's compliance with the code,
  - (b) monitoring whether the requirement to comply with a direction given under section 9(2)(a) has been fulfilled,
  - (c) exercising functions in relation to the offer of a market rent only lease.
- (3) A requirement under this paragraph to provide information may, in particular, be a requirement to—
- (a) provide documents,
  - (b) provide information verbally.
- (4) A requirement under this paragraph is imposed on a person by giving the person written notice—
- (a) specifying—
    - (i) the information the person is required to provide, and
    - (ii) the way in which the person is required to provide it, and
  - (b) explaining that failing to comply with the requirement or providing false information in response to it may be an offence under this Chapter.
- (5) For the purpose of sub-paragraph (4)(a)(ii), specifying the way in which a person is required to provide information includes specifying—
- (a) to whom it is to be provided,
  - (b) where it is to be provided,
  - (c) when, or the time by which, it is to be provided,
  - (d) the form and manner in which it is to be provided.
- (6) If an individual is required to attend a particular place under this paragraph, the adjudicator must offer to pay any necessary travelling expenses.
- (7) A person may not be required under this paragraph to do anything that the person could not be compelled to do in proceedings before the Court of Session.

###### *Offence of failing to comply with requirement*

- 5 (1) A person commits an offence if—
- (a) the person intentionally fails to comply with a requirement under paragraph 4 to provide information, and
  - (b) the person does not have a reasonable excuse for failing to comply.

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- (2) For the purpose of sub-paragraph (1)(a), a person is not to be regarded as having complied with a requirement under paragraph 4 to provide information unless the person provided the information in the way specified in the notice imposing the requirement.
- (3) A person who commits an offence under sub-paragraph (1) is liable, on conviction, to a fine.
- (4) On summary conviction, the fine may not exceed the statutory maximum.

#### *Offence of providing false information*

- 6 (1) A person commits an offence if, in response to a requirement under paragraph 4 to provide information, the person knowingly provides false information.
- (2) A person who commits an offence under sub-paragraph (1) is liable, on conviction, to a fine.
- (3) On summary conviction, the fine may not exceed the statutory maximum.

## CHAPTER 2 **S**

### OTHER POWERS

#### *Power to advise on the code*

- 7 The adjudicator may give any person advice on any matter relating to the code.

#### *Power to issue guidance*

- 8 (1) The adjudicator may prepare and make publicly available guidance about—
  - (a) the practices and procedures that the adjudicator intends to adopt in carrying out the functions of the adjudicator,
  - (b) the application of the code (or any provision of it),
  - (c) steps that pub-owning businesses need to take in order to comply with the code,
  - (d) any other matter relating to the code.
- (2) The adjudicator must take any guidance that is being made publicly available by virtue of sub-paragraph (1) into account when exercising a function to which the guidance relates.
- (3) Before preparing any guidance, the adjudicator must consult any person the adjudicator considers it appropriate to consult.

#### *General powers*

- 9 The adjudicator may do anything which appears to the adjudicator to be—
  - (a) necessary or expedient for the purposes of, or in connection with, the performance of the functions of the adjudicator, or
  - (b) otherwise conducive to the performance of those functions.

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### PART 3 **S**

#### FUNDING AND OTHER SUPPORT

#### CHAPTER 1 **S**

##### ASSISTANCE FROM THE SCOTTISH MINISTERS

###### *Loans*

- 10        The Scottish Ministers may—
- (a)    give loans to the adjudicator, and
  - (b)    attach conditions (including conditions as to repayment and the payment of interest) to any loan given.

###### *Other assistance*

- 11        The Scottish Ministers may provide staff, premises, facilities or other assistance to the adjudicator (with or without charge).

#### CHAPTER 2 **S**

##### LEVY FUNDING

###### *Annual levy on pub-owning businesses*

- 12        (1) The adjudicator may impose a levy in respect of a financial year on any person who is, or was, a pub-owning business during the year.
- (2) But the levy may only be imposed in respect of a financial year if the Scottish Ministers have consented to its being imposed in respect of that year.

###### *Amount of levy*

- 13        (1) The rate at which a person is to be charged the levy in respect of a financial year is to be set by the adjudicator.
- (2) The adjudicator may set different rates for different persons or descriptions of person.
- (3) Any difference in the rate must be based on criteria broadly intended to reflect the expenses that the adjudicator has incurred, or expects to incur, in dealing with matters relating to different pub-owning businesses.
- (4) The adjudicator is to set the rate (or rates) on the basis that the levy's purpose is to contribute towards meeting the adjudicator's expenses.
- (5) In setting the rate (or rates) the adjudicator—
- (a)    must take into account any sums received or expected to be received from sources other than levy payments, and
  - (b)    may take into account estimated as well as actual expenses.

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- (6) Having set the rate (or rates) for a financial year, the adjudicator must make publicly available—
- (a) a statement of the rate (or rates) set,
  - (b) an explanation of the basis on which the rate setting was done, and
  - (c) if different rates are set, a statement of the criteria referred to in sub-paragraph (3) on the basis of which those rates were set.
- (7) For the purposes of this paragraph, “expenses” includes payments made by virtue of paragraphs 23 and 25(2).

#### *Liability to pay*

- 14 (1) A person is liable to pay the adjudicator the chargeable amount in respect of a financial year if—
- (a) the person is a person upon whom the levy may be imposed in respect of the year, and
  - (b) the person has received a charging notice from the adjudicator in respect of the year.
- (2) In this paragraph—
- “chargeable amount” means the rate at which the person is to be charged the levy in respect of the financial year,
  - “charging notice” means a notice setting out—
    - (a) the chargeable amount,
    - (b) when it is to be paid,
    - (c) how it is to be paid.

#### *Rebate*

- 15 (1) If, having collected the levy in respect of a financial year, the adjudicator has a surplus, the adjudicator may repay some or all of it to pub-owning businesses.
- (2) In sub-paragraph (1), “surplus” means the money held by the adjudicator at the end of a financial year, less the liabilities shown in the adjudicator's statement of accounts for the year.

#### *Appeals*

- 16 A person on whom a levy is imposed under paragraph 12 may appeal to the sheriff against—
- (a) the imposition of the levy,
  - (b) the amount of the levy.

### **PART 4 S**

#### ACCOUNTABILITY

#### *Accounts and audit*

- 17 (1) The adjudicator must—

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- (a) keep proper accounts and accounting records,
  - (b) prepare in respect of each financial year a statement of accounts,
  - (c) send a copy of the statement to the Auditor General for Scotland for auditing.
- (2) The adjudicator must comply with any direction which the Scottish Ministers give it in relation to the matters mentioned in sub-paragraph (1)(a) and (b).

*Annual report*

- 18 (1) The adjudicator must, after each financial year—
- (a) prepare and make publicly available a report of its activities during the year, and
  - (b) send a copy of the report to the Scottish Ministers.
- (2) The Scottish Ministers are to lay before the Scottish Parliament a copy of each report received by them under sub-paragraph (1).
- (3) A report under sub-paragraph (1) must include—
- (a) a summary of—
    - (i) arbitrations conducted by the adjudicator,
    - (ii) investigations carried out by the adjudicator,
    - (iii) cases in which, at the end of an investigation, the adjudicator has taken enforcement action,
    - (iv) cases in which the adjudicator has exercised functions in relation to the offer of a market rent only lease,
  - (b) if the adjudicator has been monitoring whether the requirement to comply with a direction given under paragraph (a) or (b) of section 9(2) has been fulfilled, an assessment about whether or not it has been.

*Information to Scottish Ministers*

- 19 The adjudicator must provide the Scottish Ministers with any information they require for the purpose of carrying out their functions under this Act.

**PART 5 S**

APPOINTMENT AND TERMS AND CONDITIONS

*Appointment*

- 20 (1) The adjudicator is to be appointed by the Scottish Ministers.
- (2) In deciding whom to appoint, the Scottish Ministers must have particular regard to the importance of the adjudicator being impartial in balancing the interests of pub-owning businesses and tied-pub tenants.
- (3) The Scottish Ministers may not appoint a person unless the Scottish Parliament has, by resolution, approved the Ministers doing so.
- (4) The Scottish Ministers may not appoint the same individual to the office on more than 3 occasions.

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### *Tenure*

- 21 (1) A person holds the office of Scottish Pubs Code Adjudicator until—
- (a) the end of the period of appointment,
  - (b) the person resigns by giving written notice to the Scottish Ministers,
  - (c) the Scottish Ministers remove the person from the office on any of the following grounds—
    - (i) the person is unable, unwilling or unfit to perform the functions of the office,
    - (ii) there was a defect in the person's appointment to the office,
    - (iii) the person was appointed to the office on the basis that the person held, and would continue to hold, another office or position and the person has ceased to hold that office or position.
- (2) In sub-paragraph (1)(a), “the period of appointment” means the period specified by the Scottish Ministers on appointing the person to the office.
- (3) When appointing a person to the office the Scottish Ministers—
- (a) must specify a period of appointment,
  - (b) may not specify a period of appointment that is longer than—
    - (i) 4 years beginning with the day that the appointment takes effect, if it is the first time the person has been appointed to the office, or
    - (ii) 3 years beginning with the day that the appointment takes effect, if the person has previously been appointed to the office.

### *Defect in appointment*

- 22 (1) A person's appointment to the office of Scottish Pubs Code Adjudicator is not void on account of any defect in the appointment.
- (2) If it comes to the Scottish Ministers' attention that there was a defect in the person's appointment to the office, the Scottish Ministers must remove the person from the office as soon as reasonably practicable.
- (3) Sub-paragraph (4) applies to an appointment to the office in the event that—
- (a) the appointment is a re-appointment of an individual who was removed from the office in accordance with sub-paragraph (2), and
  - (b) no other person has been appointed to the office in the period between the individual's removal and re-appointment.
- (4) If this sub-paragraph applies to an appointment—
- (a) the appointment is not to be counted for the purpose of paragraph 20(4), and
  - (b) the maximum period of appointment that the Scottish Ministers may specify is whatever was left of the individual's last period of appointment immediately before the individual was removed from the office.
- (5) For the purpose of sub-paragraph (4)(b), if the defect in the person's last appointment to the office was that a longer period of appointment was specified than paragraph 21(3)(b) permits, the last specified period of appointment is to be treated as the maximum permitted period.

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#### *Remuneration*

- 23 The adjudicator may, in accordance with a determination by the Scottish Ministers, pay to, or in respect of, the person holding the office of Scottish Pubs Code Adjudicator—
- (a) remuneration,
  - (b) allowances (including expenses),
  - (c) sums by way of, or in respect of, pensions.

#### *Other terms and conditions*

- 24 The Scottish Ministers may determine the terms and conditions of the adjudicator in relation to matters not covered by this schedule.

### **PART 6** **S**

#### STAFF

#### *Secondees*

- 25 (1) The adjudicator may make arrangements for persons to be seconded to the adjudicator to serve as members of the adjudicator's staff.
- (2) The arrangements may include provision for payments by the adjudicator to either or both—
- (a) the person with whom the arrangements are made,
  - (b) the person seconded to the adjudicator's staff.
- (3) Before making arrangements under sub-paragraph (1), the adjudicator's policies on the following matters must be approved by the Scottish Ministers—
- (a) the number of staff to be seconded,
  - (b) payments to be made to, or in respect of, seconded staff,
  - (c) the terms and conditions on which staff are to be seconded.



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