

2024 No. 193

LANDLORD AND TENANT

The Scottish Pubs Code Regulations 2024

Made - - - - *25th June 2024*

Coming into force - - *7th October 2024*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 1, 7 and 23 and schedule 1 of the Tied Pubs (Scotland) Act 2021(a) and all other powers enabling them to do so.

In accordance with section 24(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Scottish Pubs Code Regulations 2024 and come into force on 7 October 2024.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Tied Pubs (Scotland) Act 2021,

“code” means the Scottish Pubs Code as set out in these Regulations,

“gaming machine” has the meaning given in section 235 of the Gambling Act 2005(b),

“group undertaking” has the meaning given by section 1161 of the Companies Act 2006(c) (and related terms on which that definition relies are to be construed accordingly),

“landlord” includes any person who is a group undertaking in relation to the person who is actually the landlord,

“lease” has the meaning given in paragraph 5(4) of schedule 1 (the Scottish Pubs Code) of the Act,

(a) 2021 asp 17. The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) and these Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(b) 2005 c. 19.

(c) 2006 c. 46.

“market rent” means the estimated rent which it would be reasonable to pay in respect of the occupation of the pub under a tenancy, assuming that—

- (a) the hypothetical tenancy is not subject to—
 - (i) a product tie, or
 - (ii) a service tie,
- (b) the hypothetical tenancy is entered into—
 - (i) on the date the estimate of the rent is being carried out,
 - (ii) in an arm’s length transaction,
 - (iii) after proper marketing,
 - (iv) between parties who are all acting knowledgeably, prudently and willingly, and
- (c) the pub will continue to be a pub,

“MRO lease” means a market rent only lease (as defined in regulation 14(1)),

“negotiation period” has the meaning given in regulation 16(5) to (7),

“product tie” means a contractual obligation which—

- (a) requires that a product to be sold in a pub must be supplied by—
 - (i) the landlord of the pub, or
 - (ii) a person nominated by the landlord, and
- (b) is not a stocking requirement (as defined in this regulation),

“production year” means a calendar year from 1 February to 31 January,

“prospective tenant” includes an existing tenant seeking to renew the lease of a tied pub,

“request date” means the date on which a tied-pub tenant requests in writing a guest beer agreement from the pub-owning business,

“service equipment charge” means a reasonable charge by the pub-owning business for the cost of servicing or maintaining equipment used to sell guest beer, taking into account the proportion of use of the equipment for guest beer compared to use for other products,

“service tie” means a contractual obligation which requires that the tenant of a pub receives a service, other than insurance, from—

- (a) the landlord of the pub, or
- (b) a person nominated by the landlord,

“stocking requirement” means a contractual obligation which—

- (a) requires that some of the beer or cider (or both) that is to be sold in the pub is produced by the landlord,
- (b) does not require the tenant to procure that beer or cider from a particular supplier, and
- (c) neither prevents the tenant from, nor penalises the tenant for, selling in the pub beer or cider that is produced by a person other than the landlord (although a contract term may impose restrictions on such sales),

“writing” includes electronic communication within the meaning of section 15 of the Electronic Communications Act 2000(a).

(2) References in these Regulations (except for references in regulation 6(1)(a) and (b))—

- (a) to a pub-owning business include a person who has been a pub-owning business,
- (b) to a tied-pub tenant include a person who has been a tenant under the lease of a tied pub.

(a) 2000 c. 7. Section 15 is relevantly amended by sections 406 and 411(2) and (3) and paragraph 158 of schedule 17 of the Communications Act 2003 (c. 21).

Tied-pub tenant not to suffer detriment

3. A pub-owning business must not subject a tied-pub tenant to any detriment as a consequence of the tenant exercising, or attempting to exercise, any right under this code.

Disputes

4. Before submitting a dispute to the adjudicator for arbitration either under section 15 of the Act or in accordance with an agreement between the parties to the dispute, a pub-owning business must take reasonable steps to resolve such disputes informally with tied-pub tenants.

Terms of the code excluded from arbitration

5. The following provisions of this code cannot be the subject of arbitration before the adjudicator—

- (a) regulation 6 (requirement to provide information to the adjudicator), and
- (b) regulation 7 (requirement to comply with adjudicator’s direction following an investigation).

Requirement to provide information to the adjudicator

6.—(1) A pub-owning business must—

- (a) inform the adjudicator that the business is a pub-owning business, by the later of—
 - (i) the end of the period of 3 months beginning on the day on which the code comes into force, or
 - (ii) the end of the period of 3 months beginning on the day on which the pub-owning business becomes a pub-owning business,
- (b) keep the adjudicator informed of any change, including transfer, to the ownership of the pub-owning business, and
- (c) inform the adjudicator if the business ceases to be a pub-owning business.

(2) In connection with any imposition by the adjudicator of a financial penalty under section 9(2)(c) of the Act, a pub-owning business must, at the request of the adjudicator and before the expiry of a period of time specified by the adjudicator, provide the adjudicator with relevant accounting information.

(3) In paragraph (2), “relevant accounting information” means accounting information, so far as not already publicly available, sufficient to enable the adjudicator to calculate the permitted maximum penalty that may be imposed on a pub-owning business in accordance with the Tied Pubs (Fees and Financial Penalties) (Scotland) Regulations 2024(a).

Requirement to comply with adjudicator’s directions following an investigation

7. A pub-owning business must comply with a direction given by the adjudicator under section 9(2)(a) or (b) of the Act.

Restriction on enforcing certain terms of agreement

8.—(1) A pub-owning business is prohibited from enforcing any of the following terms in a lease—

- (a) a term under which a tied-pub tenant is prevented from, or can be penalised for, taking action to enforce the code,
- (b) a term which provides that a rent assessment or rent review in relation to the tied pub—

(a) S.S.I. 2024/187.

- (i) may be initiated only by the pub-owning business,
- (ii) may only determine that the rent is to be increased,
- (iii) may not determine that the rent is to be reduced.

(2) A pub-owning business may not enforce a term of an agreement between a pub-owning business and a tied-pub tenant to the extent to which it is incompatible with this code.

PART 2

Information and advice to prospective tied-pub tenants

Pre-entry training for prospective tenants

9.—(1) Before entering into a lease of a tied pub with a prospective tenant, a pub-owning business must—

- (a) advise the prospective tenant to complete appropriate pre-entry training, and
- (b) give the prospective tenant information about providers of such training.

(2) In this regulation, “appropriate pre-entry training” means training which includes material—

- (a) designed to raise awareness of the matters involved in operating a pub and entering into product ties and other agreements with landlords,
- (b) explaining a tied-pub tenant’s obligations and the responsibilities involved in operating a pub.

(3) A pub-owning business is not required to give advice and information about appropriate pre-entry training to a prospective tenant who—

- (a) is currently, or
- (b) has been, within the period of three years ending on the day on which the lease is proposed to start,

a tied-pub tenant.

Information to be provided to prospective tenants

10.—(1) Before entering into a lease of a tied pub with a prospective tenant, a pub-owning business must provide to the prospective tenant—

- (a) a draft of the proposed lease,
- (b) a rent assessment statement, in which the rent is valued on the day on which the proposed lease is proposed to begin, otherwise meeting the requirements set out in regulation 12(2) to (5),
- (c) a copy of any dilapidation report prepared in respect of the lease covering the period of the previous tenancy of the tied pub, and
- (d) information about—
 - (i) completed repairs undertaken on the tied pub covering the period of the previous tenancy,
 - (ii) any repairs required to be carried out at the start of the lease by the tenant,
 - (iii) any repairs required to be carried out at the start of the lease by the pub-owning business,
 - (iv) any business rates, fees, service rates and other costs associated with the operation of the pub which are the responsibility of the tenant,
 - (v) any publicly available reports analysing the trading costs of tied pubs in the United Kingdom, including the costs of the agreements under which such pubs are occupied,

- (vi) any arrangements proposed by the pub-owning business relating to gaming machines at the pub, including details of how income from the machines is to be distributed,
 - (vii) advice and support the pub-owning business can provide to tenants and prospective tenants, and
 - (viii) sources of independent advice and support for tenants and prospective tenants.
- (2) For the purposes of paragraph 1(vii), the advice and support to be provided to tenants and prospective tenants by the pub-owning business may include advice and support in respect of—
- (a) the capabilities and training needs of the tied-pub tenant and the tenant’s employees,
 - (b) licences and any relevant training requirements in relation to those licences,
 - (c) brand promotion and merchandising,
 - (d) pub promotion and marketing,
 - (e) other aspects of business management which are significant, in the pub-owning business’s opinion, to the running of the tied pub,
 - (f) provision and maintenance of dispensing equipment,
 - (g) the benefits which the tied-pub tenant may expect to enjoy as a consequence of the pub-owning business’s ability to procure and supply products, services and expertise to the tied-pub tenant, and
 - (h) the exterior decoration of the premises, the signs, car parks and gardens (where relevant).
- (3) If not already included in the draft lease, a pub-owning business must in addition to the information set out in paragraph (1) provide a prospective tenant with—
- (a) information about—
 - (i) processes for dealing with breaches of lease terms,
 - (ii) responsibilities and processes for dealing with repairs and dilapidations,
 - (iii) how the landlord will deal with complaints and disputes arising under the lease, and
 - (iv) the processes which may be followed by the tenant where the tenant considers that the pub-owning business has failed to comply with the provisions of the Code,
 - (b) any proposal for the pub-owning business to invest in the pub, and
 - (c) the current price list for tied products or services, and any expected changes, including discounts, to these prices within the period of three months beginning on the start date of the lease.
- (4) Where the prospective tenant has not previously leased the pub in question, the pub-owning business must in addition to the information set out in paragraphs (1) and (2) provide the prospective tenant with—
- (a) a description of the pub,
 - (b) a description of the licences currently applicable to the pub, and
 - (c) information about—
 - (i) any enforcement action involving the pub in the last two years (for example, relating to health and safety or planning), and
 - (ii) the number of tenants who have occupied the pub during the previous ten years.
- (5) Paragraph 4(c)(i) is subject to any legal requirements placed on the pub-owning business relating to the processing of data.

Prospective tenants to prepare a business plan

11. Before entering into a lease of a tied pub with a prospective tenant a pub-owning business must—

- (a) advise the prospective tenant to prepare a business plan taking into account the information provided under regulation 10, and to seek independent advice to do so,

- (b) provide the prospective tenant with information on independent providers of business plan advice,
- (c) ask to see a copy of the prospective tenant's business plan, and
- (d) have due regard to the prospective tenant's business plan, if provided, when negotiating the lease.

PART 3

Rent assessment and rent review

Rent assessment

12.—(1) The pub-owning business must provide the tied-pub tenant with a rent assessment statement—

- (a) at least 6 months before the date the rent is to change as a result of a rent review process initiated under the terms of an existing lease, or
- (b) in accordance with regulation 13, if a rent review process has not been initiated under the terms of an existing lease.

(2) The rent assessment statement must set out—

- (a) the proposed rent for the tied pub, valued at the valuation date,
- (b) the methods, assumptions and disregards used to calculate the rent,
- (c) a profit and loss forecast for a 12 month period beginning on the valuation date,
- (d) the volume of alcohol, including the number of barrels of alcohol, if it is reasonably available, purchased for the pub from the pub-owning business, or any person acting on behalf of the pub-owning business, in the last 3 years ending on the valuation date of the rent assessment statement, and
- (e) any other information or sources of information relied upon to assess the rent.

(3) When preparing the rent assessment statement a pub-owning business must take into account the professional standards, rules and guidance of the Royal Institution of Chartered Surveyors, or ensure the professional standards, rules and guidance of the Royal Institution of Chartered Surveyors are taken into account by the person preparing the rent assessment statement on behalf of the pub-owning business.

(4) Where reasonably possible, the profit and loss forecast mentioned in paragraph (2)(c) is to be based on actual income and costs relevant to the pub in question or, where actual income and costs are not available, to a comparable pub in the same vicinity.

(5) Where the profit and loss forecast is not based on actual costs it must include a reasonable explanation of the basis for the figures used.

(6) When issuing a rent assessment statement to a tied-pub tenant in connection with a rent review, a pub-owning business must—

- (a) advise the tenant to seek independent advice,
- (b) provide the tenant with information about sources of independent advice, and
- (c) comply with any reasonable request for further information by the tied-pub tenant which is relevant for the negotiation of the new rent.

(7) If the pub-owning business is unable to comply with a request under paragraph (6)(c) the pub-owning business must, as soon as reasonably practicable, provide to the tied-pub tenant a reasonable explanation why the information has not been provided.

(8) In this regulation, “valuation date” means either, as the case may be, the date—

- (a) specified in a rent assessment statement, being at least 6 months before the date the rent is to change as a result of a rent review process initiated under the terms of an existing lease,

- (b) on which a tenant requests a rent review under regulation 13(1).

Rent review

13.—(1) Where the existing lease of a tied pub does not include a rent review process a pub-owning business must, at the written request of a tied-pub tenant, review the rent payable in respect of the lease where—

- (a) the contractual period of the lease is 12 months or more,
- (b) a rent review under this regulation has not been requested within the period of five years ending on the date of the current request, and
- (c) a rent assessment has not been carried out within the period of five years ending on the date of the current request.

(2) A pub-owning business need not review the rent payable where the tied-pub tenant has separately requested an MRO lease and that request is in either a negotiation period or a rent assessment period, as mentioned in regulations 15 to 18.

(3) When reviewing the rent payable in response to a request under this regulation, a pub-owning business must—

- (a) provide a rent assessment statement meeting the requirements set out in regulation 12(2) to (5) within a period of 6 weeks beginning on the date of the tenant's request, and
- (b) assess the rent as the rent likely to be paid on the open market by a willing tenant to a willing landlord—
 - (i) for a lease in the same terms as the existing lease, other than the rent payable, and
 - (ii) on the basis of reasonable assumptions and disregards of the sort likely to be negotiated on the open market between a willing tenant and a willing landlord.

(4) The period of 6 weeks mentioned in paragraph (3)(a) may be extended by a further 4 weeks with the agreement of both parties.

(5) Where the rent set out in the rent assessment statement differs from the rent payable on the date on which the tenant made a request under this regulation, the rent may change only by mutual agreement of the pub-owning business and the tied-pub tenant.

(6) A rent review process under this regulation comes to an end—

- (a) when the parties have mutually agreed in writing a new rent, or
- (b) after a period of 6 months beginning with the date on which the tenant received the rent assessment statement,

whichever is earlier.

(7) When a new rent is mutually agreed it applies from the day after the date on which it is agreed in writing.

PART 4

Market rent only leases

Characteristics of an MRO lease

14.—(1) An MRO lease is a lease, the terms of which—

- (a) set the rent payable in respect of the tenant's occupation of the pub at—
 - (i) an amount agreed between the landlord and the tenant in accordance with the procedure described in this Part, or
 - (ii) the market rent, in the event that no agreement is reached in accordance with that procedure,
- (b) impose neither a product tie nor a service tie in relation to the pub,

- (c) comply with any requirements set out in this code as to the terms that a lease must contain in order to be an MRO lease, and
- (d) do not contain any unreasonable terms.

(2) An MRO lease modifies a tied-pub tenant's existing lease only to the extent necessary for that lease to become an MRO lease, except where the tenant agrees to a more extensive modification of their existing lease or accepts an offer of a new lease.

(3) An MRO lease may, with the agreement of both the pub-owning business and tenant, be for a period longer than the remaining period of the existing lease.

(4) Any offer which includes one or more of the following terms is not an offer of an MRO lease—

- (a) a break clause only exercisable by the pub-owning business, unless such a term is included in the existing lease,
- (b) a lease period shorter than the remaining period of the existing lease,
- (c) a stocking requirement other than as defined in regulation 2(1),
- (d) a deposit requirement which increases the deposit disproportionately to any rent increase, except with the consent of the tied-pub tenant, or
- (e) a personal guarantee requirement more onerous than in the existing lease, except with the consent of the tied-pub tenant.

Requirement to offer an MRO lease

15.—(1) A pub-owning business must offer their tied-pub tenant an MRO lease at the tenant's request.

(2) But a pub-owning business need not offer an MRO lease where—

- (a) the term of the tenant's lease is one year or less,
- (b) the term of the tenant's lease is for a period longer than one year and less than one half of the term of the lease has passed at the date on which the tenant requests an MRO lease,
- (c) the tenant has requested an MRO lease within the past two years,
- (d) the tenant or the pub-owning business has served a notice to bring the lease to an end, or
- (e) the investment exception applies.

(3) Paragraph (2)(a) does not apply where a pub has been occupied for a period of more than one year under successive leases of one year or less.

(4) If a pub-owning business relies upon an exemption under paragraph (2) to refuse an offer of an MRO lease, the pub-owning business must inform their tenant.

(5) The investment exception applies for 5 years from the date an investment agreement was agreed, where the pub-owning business is investing in capital improvement works to the pub which is equal to or higher than the greater of—

- (a) £35,000, or
- (b) 150% of the annual rent of the pub.

(6) The investment exception does not apply unless—

- (a) the investment agreement has been entered into voluntarily by the tenant outside of any obligation arising under their lease,
- (b) the tenant has, before entering into the investment agreement, been given the opportunity to obtain alternative estimates for the works, and
- (c) the pub-owning business has, before entering into the investment agreement, informed their tenant in writing about how the investment agreement may affect the tenant's right to an MRO lease.

(7) Paragraph 6(c) does not apply where the pub-owning business has entered into an investment agreement preceding the date these Regulations come into force.

(8) The investment exception ceases to apply where capital improvement works arranged under an investment agreement have, without reasonable excuse—

- (a) not started within 12 months of the date agreed in the investment agreement, or
- (b) stopped for 12 months or more.

(9) For the purposes of paragraph (8), “reasonable excuse” includes where the works do not start, or stop, due to circumstances beyond the control of the pub-owning business or the tenant.

(10) In this regulation—

“investment agreement” means a written agreement between the pub-owning business and their tenant for the pub-owning business to invest in capital improvement works to the pub,

“capital improvement works” does not include routine maintenance, works carried out under landlord repairing obligations, works carried out under dilapidations requirements, or works to make a pub safe and compliant with health and safety requirements before letting it to the tenant.

Process for offering an MRO lease

16.—(1) The tied-pub tenant may request an MRO lease from the pub-owning business in writing and the request must include—

- (a) the tenant’s name, postal address, email address (if any) and telephone number, and
- (b) the name of the tied pub in relation to which the request for an offer of an MRO lease is being made and its address.

(2) The pub-owning business must make the tenant an offer of an MRO lease—

- (a) in writing as soon as possible and in any event within a period of 4 weeks beginning with the day on which the tenant’s request was received by the pub-owning business,
- (b) which complies with the requirements set out in paragraph (3).

(3) The conditions referred to in paragraph (2) are that the offer of an MRO lease must—

- (a) include a draft deed of variation, or a draft lease where the tenant consents to a new lease being offered,
- (b) provide for a new rent.

(4) When making an offer of an MRO lease, a pub-owning business must—

- (a) provide information about any assumptions, disregards, information or sources of information used to calculate the proposed rent, and
- (b) advise tenants to take independent advice on the terms of the MRO lease.

(5) Following the offer of an MRO lease there is to be a negotiation period during which the pub-owning business and the tenant are to use their best endeavours to agree terms and enter into an MRO lease as soon as possible.

(6) The negotiation period is to last no longer than a period of 8 weeks beginning with the day on which the offer of an MRO lease is received by the tenant.

(7) The negotiation period may be extended by up to 4 weeks by agreement between the pub-owning business and the tenant.

(8) The pub-owning business and the tenant are to meet their own legal costs in connection with entering into an MRO lease.

Assessing the market rent of an MRO lease

17.—(1) If at the end of the negotiation period the pub-owning business and the tied-pub tenant have not reached agreement on the rent to be paid under the MRO lease, a rent assessor is to be appointed to determine the market rent which will apply to the MRO lease.

(2) The rent assessor is to be appointed by the pub-owning business with the consent of the tied-pub tenant within a period of 3 weeks beginning on the day after the negotiation period ends.

(3) In the event of a failure to agree an appointment under paragraph (2), the failure must be referred to the adjudicator within a period of 2 weeks beginning with the date on which the 3 week period referred to in paragraph (2) ends.

(4) A referral to the adjudicator under paragraph (3) can be made by either the pub-owning business or the tied-pub tenant.

(5) The adjudicator is to appoint a rent assessor within a period of 3 weeks beginning with the day on which the adjudicator is notified of that failure by either the pub-owning business or the tied-pub tenant.

(6) In the event that the adjudicator is not notified of a failure to agree a joint appointment as referred to in paragraph (3) by either the pub-owning business or the tied-pub tenant the MRO process comes to an end.

(7) The rent assessor's terms of appointment must require the rent assessor to determine the market rent for the MRO lease and notify the pub-owning business and tied-pub tenant of that determination, within a period of 4 weeks beginning with the date of the rent assessor's appointment.

(8) The pub-owning business must make the tied-pub tenant an offer in writing of an MRO lease within a period of 4 weeks beginning on the day on which the rent assessor notifies the parties in writing of the market rent under paragraph (7).

(9) In accordance with paragraph (8), the pub-owning business must specify that the rent payable is the market rent determined by the rent assessor payable from the date on which the tenant requested an MRO lease under regulation 16(1).

(10) If the offer of an MRO lease has not been accepted by the tied-pub tenant within 2 weeks beginning with the day the tenant received the market rent determination the rent assessment period comes to an end.

(11) The rent assessor's fees are to be split equally between the pub-owning business and the tied-pub tenant.

(12) The rent assessor must be a member or fellow of the Royal Institution of Chartered Surveyors(a).

(13) The adjudicator may set additional criteria that a person must meet in order to be appointed as a rent assessor.

Referring a failure to agree an MRO lease to the adjudicator

18. If at the end of the negotiation period and any rent assessment period the pub-owning business and the tied-pub tenant have not agreed the terms of the MRO lease, this failure to agree may be referred to the adjudicator as a dispute under regulation 4.

Right to end an MRO process

19. A tied-pub tenant may end the MRO process, as referred to in regulations 16 and 17, at any time by writing to the pub-owning business confirming that—

- (a) they no longer wish to continue the MRO process, or
- (b) they agree to a separate lease agreement or lease arrangement with the pub-owning business.

(a) Commonly referred to as the RICS, a UK-based professional body for surveyors founded on 15 June 1868 and incorporated by Royal Charter on 26 August 1881.

PART 5

Guest beer agreements

Characteristics of a guest beer agreement

20.—(1) A guest beer agreement is an agreement that—

- (a) allows a tied-pub tenant to—
 - (i) sell to the pub's customers at a price of the tenant's choosing, at least one beer chosen by the tenant (regardless of who produces it), and
 - (ii) change the chosen beer as frequently as the tenant wishes,
- (b) allows the tenant to do those things without penalty, and
- (c) satisfies the criteria specified in paragraph (2).

(2) A guest beer agreement must—

- (a) not relate to a brand of a beer of which either—
 - (i) more than 5,000 hectolitres was produced in the production year immediately preceding the production year in which the request date occurs, or
 - (ii) the brand of beer has not been in production for a full production year immediately preceding the production year in which the request date occurs and the producer reasonably estimates that more than 5,000 hectolitres will be produced in the production year in which the request date occurs,
- (b) not vary the existing lease except—
 - (i) to the extent necessary to include the guest beer agreement, and
 - (ii) where a service equipment charge has been agreed by the parties, to provide for that charge,
- (c) not penalise the tied-pub tenant in any way, including by requiring the tenant to cease selling any product,
- (d) not restrict the tied-pub tenant from purchasing a guest beer from a person of the tenant's choosing,
- (e) not contain any restrictions on how a guest beer may be purchased, stored or sold (for example, in casks, kegs, bottles, cans).

(3) This regulation does not require a service equipment charge to be included within a guest beer agreement.

Requirement to offer a guest beer agreement

21.—(1) A pub-owning business must offer to enter into a guest beer agreement with the tied-pub tenant at the tenant's request.

(2) A pub-owning business need not offer to enter into a guest beer agreement where, on the request date, the tied-pub tenant and the pub-owning business have an existing guest beer agreement which meets the criteria in regulation 20.

Process for offering a guest beer agreement

22.—(1) The tied-pub tenant may request a guest beer agreement from the pub-owning business and any such request must be in writing.

(2) The pub-owning business must send the tenant an offer to enter into a guest beer agreement in writing as soon as possible and in any event within 4 weeks beginning with the day on which the tenant's request was received by the business.

(3) An offer to enter into a guest beer agreement must include information on any service equipment charge where applicable to the guest beer agreement.

(4) The pub-owning business and the tenant are to meet their own legal costs in connection with entering into a guest beer agreement.

(5) The tied-pub tenant and the pub-owning business must take reasonable steps to minimise—

- (a) the costs, and
- (b) the administrative burden

of entering into a guest beer agreement.

Requirement to change a guest beer brand

23.—(1) A pub-owning business may give written notice to a tied-pub tenant to change the guest beer brand (see regulation 20(1)(a)(ii)) where the pub-owning business has reasonable evidence that a guest beer brand under regulation 20(2)(a)(i) has exceeded the production level of 5,000 hectolitres in a production year.

(2) A pub-owning business must include in their written notice a fair and reasonable timescale to change the guest beer brand.

PART 6

Miscellaneous

Gaming machines

24. A pub-owning business must not enter into a new tied pub lease which places a mandatory requirement on a tied-pub tenant to purchase or rent gaming machines from—

- (a) the pub-owning business, or
- (b) a supplier nominated by the pub-owning business.

Flow monitoring devices

25.—(1) A pub-owning business must not subject a tied-pub tenant to detriment or impose any liability on a tied-pub tenant as a result of any reading taken from a flow monitoring device unless there is additional evidence in connection with the purchase and stock of alcohol at the tied pub.

(2) A “flow monitoring device” means a device which is located at the tied pub at the direction of the pub-owning business—

- (a) to measure the amount of alcohol being sold by the tied-pub tenant, and
- (b) for the purposes of verifying that the tenant does not sell alcohol at the tied pub in contravention of the terms of the tied pub lease or any other contractual obligation.

TOM ARTHUR

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
25th June 2024

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under powers conferred by sections 1, 7, 23 and schedule 1 of the Tied Pubs (Scotland) Act 2021 and come into force on 7 October 2024.

These Regulations establish the Scottish Pubs Code and sets out rules and procedures to govern the relationship between pub-owning businesses and their tied tenants.

Regulation 3 prohibits a pub-owning business from subjecting the tied-pub tenant to any detriment should the tied-pub tenant exercise, or attempt to exercise, a right under these Regulations.

Regulation 4 requires a pub-owning business to take reasonable steps to informally resolve disputes with their tied-pub tenant before submitting a dispute to the adjudicator.

Regulation 5 provides that regulation 6 (requirement to provide information to the adjudicator) and regulation 7 (requirement to comply with adjudicator's direction following an investigation) are prohibited from being the subject of a dispute submitted for arbitration before an adjudicator by a pub-owning business.

Regulation 6 requires pub-owning businesses to inform the adjudicator that they are a pub-owning business and any changes thereafter of the ownership of the pub-owning business.

Regulation 7 requires a pub-owning business to comply with a direction given by the adjudicator (under section 9(2)(a) or (b) of the Tied Pubs (Scotland) Act 2021).

Regulation 8 prohibits a pub-owning business from enforcing a term within a tied pub lease agreement that is incompatible with the Regulations.

Regulations 9 to 11 set out the information and advice a pub-owning business is required to give to a prospective tied-pub tenant before entering into a tied pub lease.

Regulation 12 governs the process for a pub-owning business to provide a rent assessment statement to their tied-pub tenant.

Regulation 13 governs the process for a tied-pub tenant to request from their pub-owning business a rent review where their existing lease does not provide for a rent review process.

Regulations 14 to 19 define the characteristics of a market-rent only lease and govern the process for tied-pub tenants to enter into a market-rent only lease with the pub-owning business.

Regulations 20 to 23 define the characteristics of a guest beer agreement and governs the process for tied-pub tenants to enter into a guest beer agreement with the pub-owning business.

Regulation 24 provides that a new tied pub lease cannot mandate tied-pub tenants to purchase or rent a gaming machine from the pub-owning business or a supplier nominated by the pub-owning business.

Regulation 25 provides that a pub-owning business cannot rely upon a reading from a flow monitoring device without additional evidence before subjecting their tied-pub tenant to a detriment or a liability as a consequence.

A Business and Regulatory Impact Assessment, Equality Impact Assessment, Data Protection Impact Assessment, and Fairer Scotland Duty Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government, B1 Spur, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD.

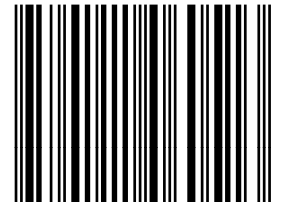
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2025 No. 92

LANDLORD AND TENANT

**The Tied Pubs (Miscellaneous Amendment) (Scotland)
Regulations 2025**

Made - - - - - *26th March 2025*

Coming into force - - - - - *30th March 2025*

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by sections 1, 4(4), and 23 and schedule 1 of the Tied Pubs (Scotland) Act 2021(a), and all other powers enabling them to do so.

In accordance with section 4(4) of that Act, the Scottish Ministers have made regulations under section 1 of that Act and have appointed a person to the office of the Scottish Pubs Code Adjudicator.

In accordance with section 24(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Tied Pubs (Miscellaneous Amendment) (Scotland) Regulations 2025 and come into force on 30 March 2025.

Amendment of the Tied Pubs (Scotland) Act 2021

2. Section 4 (Scottish Ministers' duty to seek to make code and appoint adjudicator) of the Tied Pubs (Scotland) Act 2021 is repealed.

Amendment of the Scottish Pubs Code Regulations 2024

3.—(1) The Scottish Pubs Code Regulations 2024(b) are amended in accordance with paragraphs (2) to (9).

(2) For regulation 1 (citation and commencement) substitute—

“Citation and commencement

1.—(1) These Regulations may be cited as the Scottish Pubs Code Regulations 2024.

(2) The following Parts of these Regulations come into force on 30 March 2025—

(a) 2021 asp 17. The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) and these Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(b) S.S.I. 2024/193, relevantly amended by S.S.I. 2024/245.

- (a) Part 1 (general),
 - (b) Part 2 (information and advice to prospective tied-pub tenants),
 - (c) Part 5 (guest beer agreements),
 - (d) Part 6 (miscellaneous).
- (3) The following Parts of these Regulations come into force on 30 June 2025—
- (a) Part 3 (rent assessment and rent review),
 - (b) Part 4 (market rent only leases).”.
- (3) In regulation 2(1) (interpretation), after the definition of “request date” insert—
- ““Schedule of Condition” means a document which accurately records the condition of the tied pub to be let,”.
- (4) In regulation 10(1) (information to be provided to prospective tenants)—
- (a) for sub-paragraph (c) substitute—
- “(c) a Schedule of Condition, and”,
- (b) in sub-paragraph (d)(v) for “any publicly available reports” substitute “at least one publicly available report”.
- (5) After regulation 11 (prospective tenants to prepare a business plan) insert—

“Schedule of condition

11A. Before entering into a new lease, a pub-owning business must take the Schedule of Condition into account—

- (a) during an assessment of any maintenance or repairs in respect of the premises, and
 - (b) before any obligations or liabilities in respect of the condition of the premises are agreed between the pub-owning business and the tied pub tenant.”.
- (6) In regulation 15(2) (requirement to offer an MRO lease)—
- (a) omit sub-paragraph (b),
 - (b) for sub-paragraph (d) substitute—
- “(d) the tenant or the pub-owning business has served a notice to bring the lease to an end and the remaining term of the tenant’s lease is three months or less, or”.
- (7) After regulation 15 (requirement to offer an MRO lease) insert—

“Requirement to offer an MRO lease: further provision where lease period is longer than one year

15A.—(1) A pub-owning business need not offer an MRO lease as required by regulation 15(1) where the term of the tenant’s lease is for a period longer than one year and less than one half of the term of the lease has passed at the date on which the tenant requests an MRO lease, except where paragraph (2) applies.

(2) This paragraph applies where a tenant requests an MRO lease during the period of 6 months immediately preceding the date on which one half of the term of the lease has passed (but see regulation 16(3A)).”.

- (8) After regulation 16(3) (process for offering an MRO lease) insert—
- “(3A) Where a tied-pub tenant has requested an MRO lease from a pub-owning business in the period of 6 months immediately preceding the date on which one half of the term of the lease of over one year has passed in accordance with regulation 15A(2), the pub-owning business may make an offer of an MRO lease which provides that the deed of variation, or new lease where the tenant consents to a new lease being offered, does not come into force until the date on which one half of the term of the lease has passed.”.
- (9) In regulation 17 (assessing the market rent of an MRO lease)—

(a) after paragraph (7) insert—

“(7A) The tied-pub tenant or pub-owning business may refer the market rent determination made by the rent assessor to the adjudicator if there is an obvious error in the rent determination.

(7B) A referral to the adjudicator under paragraph (7A) must be made within a period of 14 days beginning on the date on which the rent assessor notifies the parties in writing of the market rent under paragraph (7).

(7C) Where the adjudicator, or another person appointed by the adjudicator, considers there to be an obvious error in the market rent determination, the adjudicator, or the person appointed by the adjudicator, may correct that error by notifying the parties in writing of the corrected market rent.”,

(b) in paragraph (8), after “paragraph (7)” insert “or, if referred to the adjudicator under paragraph (7A), within 4 weeks of the date on which the adjudicator, or a person appointed by the adjudicator, determines the rent under paragraph (7C)”,

(c) in paragraph (9), after “the rent assessor” insert “or, if there is a referral under paragraph (7A), by the adjudicator or a person appointed by the adjudicator,”.

TOM ARTHUR

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
26th March 2025

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Tied Pubs (Scotland) Act 2021 (“the Act”) and the Scottish Pubs Code Regulations 2024 (“the Code”) and come into force on 30 March 2025.

Regulation 2 repeals section 4 of the Act. Section 4(4) of the Act provides that the Scottish Ministers may repeal section 4 when they have made regulations under section 1 of the Act and appointed a person to the office of the Scottish Pubs Code Adjudicator. The Scottish Ministers made the Scottish Pubs Code Regulations 2024 on 25 June 2024 under section 1 of the Act. A person has been appointed to the office of Adjudicator.

Regulation 3(2) changes the date on which Parts 3 and 4 of the Code come into force to 30 June 2025. The remaining Parts of the Code come into force on 30 March 2025.

The effect of regulations 3(3), 3(4)(a) and 3(5) is that a pub-owning business must provide a schedule of condition, which documents the condition of repair of the premises, to the tenant at the outset of the lease. The pub-owning business is required to take that schedule of condition into account during an assessment of any maintenance or repairs in respect of the premises, and when any obligations or liabilities in respect of the condition of the premises are agreed.

Regulation 3(4)(b) provides that instead of providing any publicly available reports analysing the trading costs of tied pubs in the United Kingdom to a tenant at the outset of a lease, a pub-owning business must provide at least one publicly available report.

Regulation 3(6)(a) omits regulation 15(2)(b).

Regulation 15(2)(d) of the Code provides that a tenant may not request an MRO lease where a notice has been served bringing the lease to an end. Regulation 3(6)(b) amends that exemption so that it only applies in the final 3 months of the term of the lease.

Regulation 3(7) inserts a new regulation 15A which provides that a tenant can request an MRO lease 6 months before the point at which half of the term of the lease has passed. Previously a tenant could not request an MRO lease before half of the term of the lease had passed.

Regulation 3(8) inserts a new regulation 16(3A) which provides that where a tenant has requested an MRO lease in the 6 month period before the point at which half of the term of the lease has passed, the pub-owning business is not required to agree to bring into effect the MRO lease until the halfway point of the lease.

Regulation 3(9) amends regulation 17 of the Code to create a process allowing either party to refer a market rent determination to the Adjudicator where there has been an obvious error. Regulation 3(9) also makes some further changes to regulation 17 so that the referral process is taken into account when the end of the rent assessment period is calculated.

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