POLICY NOTE

THE TIED PUBS (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2025

SSI 2025/XXX

The above instrument was made in exercise of the powers conferred by sections 1, 4(4) and 23 and Schedule 1 of the Tied Pubs (Scotland) Act 2021. The instrument is subject to the affirmative procedure.

Summary Box

This instrument will amend the Scottish Pubs Code Regulations 2024 which create a Scottish Pubs Code for tied pubs. The code creates rights and protections for tied pub tenants and places requirements on pub-owning businesses (the tied pub landlords). It is the main instrument to implement the Tied Pubs (Scotland) Act 2021[1]. It has been prepared consistently with the three regulatory principles set out in the Act. These are:

(a) the principle of fair and lawful dealing by pub-owning businesses in relation to their tied-pub tenants,

(b) the principle that tied-pub tenants should not be worse off than they would be if they were subject to neither a product tie nor a service tie,

(c) the principle that any agreement between a pub-owning business and a tied-pub tenant should fairly share the risks and rewards amongst the parties.

Policy Objectives of the Act

The Tied Pubs (Scotland) Act 2021 received Royal Assent in May 2021. The purpose of the Act is to regulate the relationship between tied pub landlords and tenants through the introduction of a statutory Scottish Pubs Code and the appointment of a Scottish Pubs Code Adjudicator. The role of the Adjudicator is to oversee and enforce the code.

Tied pubs are pubs which are owned by a pub-owning business and leased to a tenant. Tenants must buy some or all of their products and services ("the tie") from the pub-owning business (their landlord) or someone nominated by the pub-owning business. Ties can include, for example, beer and these products and services are often charged at a higher cost than on the open market. In return, tenants sometimes pay lower rent and receive other support from the pub-owning business.

Policy Objectives of the Scottish Pubs Code

The aim of the Scottish Pubs Code is to improve the position of tied pub tenants through creating a statutory framework to govern the relationship between pub-owning businesses

[1] https://www.legislation.gov.uk/asp/2021/17/contents/enacted

and their tied pub tenants. The Scottish Government supports the principle of fair and equitable treatment within tied pub leases and has a desire to see a vibrant tenanted pub sector in Scotland. As of May 2023, it is estimated there were just under 700 tied pubs in Scotland.

The Tied Pubs (Scotland) Act 2021 was passed unanimously by the Scottish Parliament on 23 March 2021. Much of what the code must contain is already pre-determined by the Act and some of the key things the code will do include:

Market Rent Only

The code requires pub-owning businesses to offer Market Rent Only (MRO) leases in certain circumstances when requested by tenants. An MRO lease is a lease which is free of ties and does not contain any unreasonable terms.

The MRO lease element is one of the main ways that a tenant can check that they are not worse off than they would be if they didn't have any ties, and thus contributes towards the second regulatory principle.

The Scottish Government recognises that to fulfil the third regulatory principle, there needs to a fair share of risk and reward in agreements between tenants and pub-owning businesses. The Scottish Government has sought to develop a balanced approach: giving tenants their rights to request Market Rent Only (MRO) whilst giving pub-owning businesses some certainty of return under their current agreement. This has resulted in the code allowing pub-owning businesses to not provide MRO leases in the following circumstances:

- For short-term leases (less than one year, unless this is a renewed lease);
- If tenants are in the first half of their lease e.g. in year two of a five year lease;
- Where the tenant has previously requested an MRO lease in the past two years;
- Where either the tenant or the pub-owning business have submitted a valid notice to bring the lease to an end; or
- Where there is an investment agreement in place for the pub between the pub-owning business and the tenants (the investment must be at least 1.5x annual rent or £35,000 whichever is greatest) there is a five-year exemption from offering MRO. This exemption is to provide certainty to pub-owning businesses to recoup substantial investment in a pub.

The code also sets out a process to request MRO leases. Drawing upon the experience in England and Wales, the Scottish Government has sought to create an MRO lease process which is straightforward, flexible and easy to use.

The code sets out terms that would be unreasonable to include in an MRO lease. Most of these are terms which are more onerous than the terms contained in a tenant's existing lease, such as a lease period which is shorter than the remaining period of the current lease.

Guest Beer Agreements

The code requires businesses to offer a guest beer agreement in certain circumstances when requested by tenants. A guest beer agreement allows a tenant to sell to their customers at least one beer that the tenant has chosen, at a price of the tenant's choice. The beer can be changed as often as the tenant wishes.

The code sets out that guest beer agreements should be restricted to brands of beer with a small production capacity of up to 5,000hL. Using sales data as a proxy for production, we estimate this will give tenants access to 96% of beer brands. This approach best meets the regulatory principle around a fair share or risk and rewards, as it is less likely (than if there were no production restriction) to result in sales of guest beer substantially replacing sales of beer supplied by the pub-owning business through the tie.

The Scottish Government is seeking to keep guest beer arrangements straightforward and simple for tenants and pub-owning businesses, therefore there is only one exemption where the pub-owning business is not required to offer a guest beer agreement when a tenant requests one. The exemption provides that pub-owning businesses need not offer a guest beer agreement when tenants have already agreed a guest beer agreement that matches the set criteria for guest beers under the Act.

Information and advice to prospective tenants

Before a tenant enters into a new or renewed lease, or develops a business plan, we are requiring the pub-owning business to make certain information available to existing and prospective tied pub tenants, to ensure fair and lawful dealing and also to enable tied pub tenants to make an assessment in relation to the second and third regulatory principles (not worse off than if they weren't subject to a tie; and a fair share of risk and rewards between the parties). Pub-owning businesses will also be required to advise certain tenants to undertake pre-entry training and to advise tenants to prepare a business plan based on independent advice and provide information on sources of independent advice. The pub-owning business is required to have due regard to the business plan when negotiating a new or renewed lease.

Rent review

A pub-owning business is required to give the tenant a rent assessment statement as part of a rent review process either as provided for within their contract or as part of a rent review under the code. A rent assessment statement should also be provided to prospective tenants. The code sets out what information must be provided and what must be included in a rent assessment statement.

The code provides for a tenant to request a rent review under the code: where a rent review is not already included in a lease, the lease is longer than 12 months and if a rent review or a rent assessment has not occurred within the past 5 years.

Rent reviews are a key part of the ongoing relationship between landlord and tenant and represent an opportunity to support the third regulatory principle “that any agreement between a pub-owning business and a tied-pub tenant should fairly share the risks and rewards amongst the parties.”

Other

The code also sets out arrangements, processes and information requests for other aspects of the tied tenant-landlord relationship. Many of these requirements must be included in the code because of the Act.

The code sets out how disputes are to be resolved and what cannot be taken to the Adjudicator for arbitration.

The code requires pub-owning businesses to provide information to the Adjudicator so that the Adjudicator knows which pub-owning businesses are operating in the Scottish market and fall under the regulatory regime.

The code prevents pub-owning businesses from requiring a tenant to purchase, or rent, gaming machines. It also prevents a pub-owning business from subjecting a tenant to a detriment or imposing a liability on a tenant because of a reading from a flow monitoring device unless a specific condition is satisfied.

Policy Objectives of the SSI

During consideration of the Scottish Pubs Code Regulations 2024 by the Economy and Fair Work Committee on 5 June 2024, the Minister for Employment and Investment noted concerns about the code amongst tenants and pub companies and indicated that he intended to undertake further focused consultation on potential amendments to ensure the code better reflected the needs of the sector.

Discussions with stakeholders were followed by a written consultation which ran from 17 September until 4 November 2024. Following consideration of the responses, the Tied Pubs (Miscellaneous Amendments) (Scotland) Regulations 2025 were prepared. The Regulations include the following:

- Introduction of a right to appeal the independent rent assessment, with a 14 day limit for the appeal to be made and this to be additional to the 4 week period provided for creation of the Market Rent Only (MRO) offer.
- MRO application process to be able to start before the half-way point of any lease so that the MRO can begin at the half-way point, with the process able to start 6 months before the half-way point.
- Pub-owning companies to be required to provide prospective tenants with at least one publicly available report analysing the trading costs of tied pubs (rather than provide any such publicly available reports, as at present).
- Introduction of a requirement for pub-owning companies to provide a Schedule of Condition to prospective tenants - and removal of the requirement to provide a copy of any dilapidation report prepared in respect of the lease covering the period of the previous tenancy of the tied pub.
- Amendment of the notice to quit exemption so that a pub-owning business need not offer an MRO only where they or a tenant have served a notice to end the lease within a specified timeframe, with that timeframe being 3 months before the end of the lease.

These amendments improve the position of tied pub tenants whilst recognising the challenges faced by all businesses. The SSI achieves the policy objective of amending the code to ensure that it will make a material difference to tied pub tenants in terms of rebalancing risk and reward.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Tied Pubs (Miscellaneous Amendment) (Scotland) Regulations 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

There was substantial formal and informal consultation on the Scottish Pubs Code Regulations 2024 and other SSIs implementing the Act.

Ahead of formal consultation on the Tied Pubs (Miscellaneous Amendments) (Scotland) Regulations 2025, three workshops were run with key stakeholders. This included the Scottish Licensed Trade Association (representing tenants' views), the Scottish Beer and Pub Association (SBPA) (representing most pub-owning businesses) together with some pub-owning business representatives. The purpose was to discuss issues on the code raised by both the SLTA and the SBPA, in order to understand the issues, gather any evidence and prioritise areas for inclusion in the written consultation.

Discussions with stakeholders informed the content of a formal written consultation which ran from 17 September until 4 November 2024[2]. As indicated to the Economy and Fair Work Committee, the consultation was short and focused on key issues of concern with a view to ensuring a code that better reflects the needs of the sector. In total, 21 responses were received, of which 16 were from groups or organisations (8 pub-owning business, 6 representative organisations and two customer groups) and 5 were from individuals.

An analysis of the responses was published[3]. A full list of those consulted and who agreed to the release of this information is attached to the report.

Respondents generally had mixed views on the proposals, with views largely divided between tenants and pub-owning businesses.

Right to appeal

There was a clear consensus that there should be a process to appeal the result from the independent rent assessor. A majority of respondents agreed that 14 days is the right amount of time for either party to appeal the result and that the time period for the appeal should be additional to the 4-week period to create a Market Rent Only (MRO) offer.

The regulation will enable a tied-pub tenant or pub-owning business to refer the market rent determination made by the rent assessor to the adjudicator if there is an obvious error in the rent determination. Obvious errors could be varied but might include, for example, obvious underestimation or overestimation of costs and prices in relation to market levels.

[2] Scottish Pubs Code for tied pubs: consultation 3 - gov.scot - https://www.gov.scot/publications/scottish-pubs-code-tied-pubs-consultation-3/

[3] Tied pubs - Scottish Pubs Code: consultation 3 – analysis report - gov.scot - https://www.gov.scot/publications/scottish-pubs-code-tied-pubs-consultation-3-analysis-report/

Market Rent Only (MRO) notice to quit

Respondents were divided on whether an MRO exemption in the case of a notice to quit should only apply where a pub-owning business or tied pub tenant has not served a notice to bring the lease to an end before a specified period of time before the end date of the lease. Overall, pub-owning businesses tended to agree with the proposal, as did the major representative body for tenants. However, two pub-owning businesses and the major representative body for pub-owning businesses strongly disagreed. Campaign groups and other representative bodies also tended to strongly disagree. Respondents were also divided on any timeframe that should apply to the proposal.

Market Rent Only (MRO) first half of the lease: earlier application process

Individual and campaign group respondents tended to agree that the MRO process should be able to start before the half-way point of a tenancy. Pub-owning businesses and representative bodies tended to divide between neither agreeing nor disagreeing and disagreeing. If the MRO process were to start before the half-way point of a tenancy, respondents were most likely to prefer the application process to begin less than 6 months before the half-way point of the lease.

Information for prospective tenants

A large majority of respondents agreed that pub-owning businesses should be required to give tied pub tenants at least one publicly available report analysing the trade costs of tied pubs in the UK (as opposed to "any publicly available reports"), as part of the information to be provided to prospective tenants.

Respondents were divided on whether pub-owning businesses should be required to provide information on the number of operators who have occupied a pub in the past ten years, as opposed to the number of tenants.

A majority of respondents agreed that pub-owning businesses should be required to provide a Schedule of Condition to prospective tenants.

Guest beer arrangements

Respondents were divided on a requirement for the tenant's consent for flow monitoring devices on guest beer lines. Generally, tenants saw no need for flow monitoring equipment on guest beer lines and pub-owning businesses considered information from flow monitoring devices to be necessary to assess trading and ensure correct rental values, to collect information on trading that will be important for future tenants, and to police the guest beer provision.

Gaming machines

Respondents were divided on whether tied pub tenants should be able to purchase or rent a single gaming machine per licensed premise, in addition to any gaming machine(s) already provided for in their lease. Generally, tenants supported this proposal and pub-owning businesses did not. Comments in support of the proposal included that the ability to have an additional gaming machine free-of-tie would provide for a more level playing field between new and existing tenants. Arguments by those who did not support the proposal included that existing rental assessments are drawn up using a model by which the share of income from gaming machines going to the pub-owning business is reflected in lower rent for the tenant

and that, a new right to obtain a single gaming machine from elsewhere during the term of an existing lease, would result in overall loss of income for the pub-owning business.

The responses to the consultation were fully considered and decisions taken on the content of the SSI reflected the aim of further improving the position of tied pub tenants whilst recognising the challenges faced by all businesses. The SSI achieves the policy objective of amending the code to ensure that it will make a material difference to tied pub tenants in terms of rebalancing risk and reward.

Impact Assessments

The following Impact Assessments have been prepared for the original supporting instruments which implement the Act:

- Business and Regulatory Impact Assessment
- Child Rights and Wellbeing Impact Assessment (screening)
- Equalities Impact Assessment
- Data Protection Impact Assessment
- Strategic Environmental Assessment (pre-screening notification)
- Fairer Scotland Duty
- Island Communities Impact Assessment (screening)

These impact assessments have been published on the Scottish Government website.

This instrument makes relatively minor amendments to the Scottish Pubs Code Regulations 2024 and is not thought to make any material difference to the outcomes of the impact assessments already carried out for the original supporting instruments to implement the Act including the Scottish Pubs Code Regulations 2024.

This instrument is anticipated to have minimal to no impacts on children, the environment and island communities.

In terms of the Fairer Scotland Duty assessment, we do not have data on the impact that implementation of the Act is likely to have on the incomes of tied pubs tenants and those that they employ. We cannot know whether changes would be uniformly made in the sector across different areas of deprivation.

There may be a difference in awareness and take-up of information about proposed changes to the Adjudicator and rights (parts of the code) between tied pub tenants with less and those with more socio-economic disadvantage and between those with better and worse IT skills, based on the England and Welsh experience. There may also be an uneven impact amongst tenants of pub-owning businesses moving to other types of business models and selling tied pubs. The assessment identifies some actions to address awareness and take-up of the code.

On equality impacts, we do not have data on the demographic make-up of the tied pub tenant population in Scotland. However, in general, successful implementation of the Act would mean that tenant and pub-owning business relationships are fairer and more balanced, which should minimise discrimination on any basis, protected characteristic or otherwise.

On data protection, the main impact was around the establishment of the Adjudicator and making sure they are aware of their obligations. The Scottish Pubs Code may also require

pub-owning businesses to disclose publicly available enforcement action against the pub in the last two years relating to health and safety and planning.

Impacts on business are detailed in the financial effects section below.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed for the following SSIs:

- The Scottish Pubs Code Regulations 2024
- The Tied Pubs (Fees and Financial Penalties) (Scotland) Regulations 2024
- The Tied Pubs (Scottish Arbitration Rules) Amendment Order 2024

The BRIA is attached[4] and is also available on the Scottish Government website. The BRIA sets out the cost and benefits of various options for pub-owning businesses and tied pub tenants. We reassessed the BRIA in view of the content of the Tied Pubs (Miscellaneous Amendments) (Scotland) Regulations 2025 and considered no adjustments were required.

We anticipate that the Scottish Pubs Code will result in a financial transfer largely from pub-owning businesses to tied pub tenants in line with regulatory principle three, concerning a fair share of risk and reward, but this will not be uniform and will likely reduce over time as the market responds to reduce this risk. The BRIA sets out the various options and models considered.

Market Rent Only

The cost of introducing MRO arrangements as set out above (the limited code option in the BRIA) are estimated to benefit an individual tenant between £0-£23,800 and for all tenants result in benefits of £0-£16.7 million per year. Pub-owning businesses are estimated to experience the same level of losses. These are estimates recognising that the costs and benefits are situation specific, and their value can be highly subjective. Tenants would also face costs of independent assessment, where this occurs. It would however also provide greater operational flexibility for tenants. Market Rent Only leases would, for pub-owning businesses, lead to a reduction in risk from market fluctuations due to higher dry rent under a MRO lease. The code may result in a reduction in the number of tied pubs and both pub-owning businesses reducing the benefits in the long-run.

Guest beer

Under the guest beer agreements set out above (the minimal code option in the BRIA). The tenant is expected to have economic benefits between £800 and £5,900 a year with the same level of losses by the pub-owning business per tied pub, where the tenant requests and is eligible for a guest beer. This represented an overall estimated benefit to tenants ranging from £0.1 million to £1.0 million per year, with pub-owning businesses experiencing the same range of costs. However, if the pub-owning business is the provider of the guest beer, then some of this loss will be offset. In the longer-term pub-owning businesses may seek to recover lost revenue by increasing dry-rent therefore the benefits of a guest beer agreement may be partially or fully offset in the long-run.

[4] Scottish Pubs Code and related regulations: business and regulatory impact assessment - gov.scot - Scottish Pubs Code and related regulations: business and regulatory impact assessment - gov.scot

Rent reviews

The approach to create a rent review right within the code (the limited code option in the BRIA), provides tenants with increased bargaining power in the negotiation of rent and leading to potentially more favourable rent arrangements, as well as greater transparency in the process. There would be costs in terms of time and resource for tenants to understand the rent assessment statement, negotiating rent or seeking independent advice. Costs to pub-owning businesses are estimated to be at £1,500 to £2,500 per tied pub that requests a rent review and there would be increased uncertainty about rent levels and future revenues for the pub-owning business. However, we have been unable to quantify how many leases it would impact. We understand that the market is moving to shorter leases (i.e. less than 5 years) and many existing leases do already have rent review arrangements within them. The impact is therefore likely to be small for pub-owning businesses, but the options could provide benefits to any eligible individual tenants to check there is a fair share of risk and reward.

The code also creates other requirements on pub-owning businesses which will create further financial impacts.

Scottish Government
Directorate for Agriculture and Rural Economy

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