POLICY NOTE

THE TIED PUBS (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2024

SSI 2024/245

The above instrument was made in exercise of the powers conferred by sections 1, 7, 10(3), 17(1) and 23 and schedule 1 of the Tied Pubs (Scotland) Act 2021. The instrument is subject to affirmative procedure.

Summary Box

The purpose of this instrument is to make corrective changes to address points raised by the Delegated Powers and Law Reform Committee on 21 May 2024 on the secondary legislation package designed to implement the Tied Pubs (Scotland) Act 2021. The instrument also changes the coming into force date to enable further consultation to occur on the Scottish Pubs Code.

Policy Objectives

The Tied Pubs (Scotland) Act 2021 ("the Act") 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.

A number of secondary legislation instruments were laid over 2 and 3 May to implement the Tied Pubs (Scotland) Act 2021. The Delegated Powers and Law Reform Committee[1] in their scrutiny of the instruments raised two points in relation to two instruments:

On the Scottish Pubs Code Regulations 2024, they drew the attention of the Parliament to the SSI on the general reporting ground. This is because the end of the rent assessment period should be after the tenant has received the market rent only lease offer, not the rent determination.

On the Tied Pubs (Fees and Financial Penalties) (Scotland) Regulations 2024 they drew to the attention of the Parliament their view that "group undertaking" was not sufficiently clear.

This SSI seeks to resolve these drafting issues.

In addition, the SSI moves the coming into force date of the Scottish Pubs Code Regulations 2024 and the Tied Pubs (Fees and Financial Penalties) (Scotland) Regulations 2024 to 31 March 2025. This will enable the Scottish Government to undertake a short targeted consultation to consider concerns raised by the tied pubs sector on the Scottish Pubs Code.

1 https://digitalpublications.parliament.scot/Committees/Report/DPLR/2024/5/22/c04b44f2-f8e5-4525-b1a7-14531f741411#6f385e6e-dcae-4a24-ad12-0bd4fbf6c54b.dita

The two principal instruments, the Scottish Pubs Code Regulations 2024 and the Tied Pubs (Fees and Financial Penalties) (Scotland) Regulations 2024, have not been approved by Parliament and have not been made at the time of laying the amendment SSI. If the two principal instruments are not approved by Parliament, then the amendment SSI will be withdrawn.

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 2024 are compatible with the UNCRC requirements.

EU Alignment Consideration

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

Consultation

No consultation was carried out on this SSI, as they represent corrective changes.

The change to the coming into force date will enable further targeted consultation on the Scottish Pubs Code.

Impact Assessments

No impact assessments have been prepared for this amending SSI given the corrective changes the SSI makes.

Financial Effects

The Minister for Employment and Investment confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business, as they make corrective changes and delay the introduction of changes through the Scottish Pubs Code.

Scottish Government
Agriculture and Rural Economy Directorate

September 2024