

**Annex A: Draft Scottish Pubs Code Regulations 2022
(Provisions in grey text have already been [consulted](#) on)**

Draft Regulations laid before the Scottish Parliament under section 24(2) of the Tied Pubs (Scotland) Act 2021, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

LANDLORD AND TENANT

The Scottish Pubs Code Regulations 2022

Made - - - - - ***

Coming into force - - - - - ***

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 1 and 14(3) 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 2022 and come into force on ***.

General interpretation

2.—(1) In these Regulations—

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

“adjudicator” means the Scottish Pubs Code Adjudicator,

“beer” and “cider” have the meanings given in section 1 of the Alcoholic Liquor Duties Act 1979,

“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,

“group undertaking” has the meaning given by section 1161 of the Companies Act 2006,

(a)

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

“pub” means premises—

- (a) in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005 has effect, and
- (b) in which the main activity (or one of the main activities) carried on is the sale of alcohol to members of the public for consumption on the premises,

“pub-owning business” means the landlord under the lease of a tied pub,

“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),

“tied pub” means a pub which is being leased to a tenant who is subject to a contractual obligation which—

- (a) requires that some or all of the alcohol to be sold in the pub be supplied by—
 - (i) the landlord of the pub, or
 - (ii) a person nominated by the landlord, and
- (b) is not a stocking requirement.

(2) References in these Regulations—

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

The regulatory principles

3. In relation to their duties under this code, pub-owning businesses are required to act in accordance with the regulatory principles set out in section 3(3) of the Act—

- (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.

Tied-pub tenant not to suffer detriment

4. A pub-owning business must not subject a tied-pub tenant to any detriment on the ground that the tenant exercises, or attempts to exercise, any right under this code.

Disputes

5.—(1) Disputes between a tied-pub tenant and a pub-owning business about whether the business has complied with a term of this code may be submitted to the adjudicator for arbitration under sections 14 to 18 of the Act.

(2) But pub-owning businesses and tenants are to use their best endeavours to resolve such disputes informally.

Terms of the code excluded from arbitration

6. The following terms of this code cannot be the subject of arbitration before the adjudicator—
- (a) regulation [7] (requirement that pub-owning businesses provide information to the adjudicator), and
 - (b) regulation [8] (requirement to comply with adjudicator’s direction following an investigation).

Requirement to provide information to the adjudicator

7. A pub-owning business must—
- (a) as soon as reasonably practicable after the commencement of this code, inform the adjudicator that the business is a pub-owning business for the purposes of this code,
 - (b) keep the adjudicator informed of any structural changes to the pub-owning business, for example, mergers or acquisitions, and
 - (c) inform the adjudicator if the business ceases to be a pub-owning business for the purposes of this code.

Requirement to comply with adjudicator’s directions following an investigation

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

Restriction on enforcing certain terms of agreement

9. A pub-owning business is prohibited from enforcing the following terms in a lease or other agreement—
- (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 in relation to the tied pub—
 - (i) may be initiated only by the business,
 - (ii) may only determine that the rent is to be increased,
 - (iii) may not determine that the rent is to be reduced.

PART { }

Information and advice to prospective tied-pub tenants

Definitions relevant to this Part

10. In this Part, “prospective tenant” includes an existing tenant seeking to renew the lease of a tied-pub.

Pre-entry training for prospective tenants

- 11.—(1) Before entering into a lease with a prospective tied-pub 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) “Appropriate pre-entry training” means training which includes material on—
- (a) how a tied-pub operates, and
 - (b) a tied-pub tenant’s obligations and responsibilities.

(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 within the past three years ending on the day the lease is proposed to start, been,

a tied-pub tenant.

Information to be provided to prospective tenants

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

- (a) a draft lease,
- (b) a rent assessment statement meeting the requirements set out in paragraphs (2), (3) and (4) of regulation [14], and
- (c) information about—
 - (i) any business rates, fees, service rates and other costs associated with the operation of the pub which are the responsibility of the tenant,
 - (ii) 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,
 - (iii) 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,
 - (iv) any advice and support the pub-owning business can provide to tenants and prospective tenants, and
 - (v) sources of independent advice and support for tenants and prospective tenants.

(2) 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 information about—

- (a) processes for dealing with breaches of lease terms,
- (b) responsibilities and processes for dealing with repairs and dilapidations,
- (c) any proposal for the pub-owning business to invest in the pub,
- (d) the current price list for tied products or services, and any expected changes or discounts to these prices, and
- (e) processes for dealing with complaints and disputes arising under the lease.

(3) 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 against the pub in the last two years, for example, relating to health and safety, food hygiene, licensing or planning, and
 - (ii) the number of tenants who have occupied the pub during the past ten years.

Prospective tenants to prepare business plan

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

- (a) advise the prospective tenant to prepare a business plan taking into account the information provided under regulation [12], 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) take the prospective tenant’s business plan, if provided, into account when negotiating the lease.

PART { }

Rent assessment and rent review

Rent assessment

14.—(1) When a rent review process is initiated under the terms of an existing tied-pub lease or under regulation [15], the pub-owning business must provide the tied-pub tenant with a rent assessment statement.

(2) The “rent assessment statement” must set out—

- (a) the proposed rent,
- (b) the methods, assumptions and disregards used to calculate the proposed rent,
- (c) a profit and loss forecast for a 12 month period beginning on the date the proposed rent is payable, and
- (d) any other information or sources of information relied upon to assess the proposed rent.

(3) When preparing the rent assessment statement a pub-owning business must take into account guidance on rent assessment issued by the Royal Institute of Chartered Surveyors, or ensure that guidance is taken into account by the person preparing the rent assessment statement on behalf of the pub-owning business.

(4) Where possible, the profit and loss forecast mentioned in paragraph (2)(c) is to be based on actual costs relevant to the pub in question or to a pub in the same vicinity.

(5) When offering 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, and
- (b) provide the tenant with information about sources of independent advice.

Rent review

15.—(1) A pub-owning business must, at the request of a tied-pub tenant, review the rent payable in respect of the tied-pub lease where—

- (a) the contractual period of the lease is 12 months or more, and
- (b) (i) the rent has not been reviewed within the past five years ending on the date of the tenant’s request, or
- (ii) there has been a material change in circumstances affecting the pub.

(2) But 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 a negotiation period or rent assessment period as mentioned in regulations [] to [].

(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 under regulation 14 within 4 weeks beginning on the date of the tenant’s request, and
- (b) assess the proposed 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) Where the proposed rent after review under this regulation differs from the current rent, the rent may change only by mutual agreement of the pub-owning business and the tied-pub tenant.

(5) If mutual agreement to change the rent has not been reached within 12 weeks beginning with the date of the tenant's request, the rent review process under this regulation comes to an end.

(6) For the purposes of this regulation, "a material change in circumstances" includes—

- (a) a change to the local infrastructure,
- (b) a change to local employment,
- (c) a long-term change to the local economic environment, or
- (d) a change to local environmental factors.

Disputes about rent assessment and rent review

16. Disputes about regulations [14 and 15] may be referred to the adjudicator for arbitration under regulation 5 only after any dispute resolution processes provided for in the tied-pub lease have been exhausted.

PART { }

Miscellaneous

Repairs and dilapidations

17.—(1) A pub-owning business must act fairly and reasonably-when enforcing any repairs and dilapidations clauses in a tied-pub lease.

(2) Disputes about regulation 17(1) may be referred to the adjudicator for arbitration under regulation 5 only after any dispute resolution processes provided for in the tied-pub lease have been exhausted.

Gaming machines

18.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

19.—(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 the condition in paragraph (2) is satisfied.

(2) The condition is that there is additional evidence in connection with the purchase and stock of alcohol at the tied pub.

(3) A "flow monitoring device" means a device which is 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.