

TIED PUBS (SCOTLAND) ACT 2021

EXPLANATORY NOTES

THE ACT

Part 4: Final Provisions

Section 23: Ancillary provision

56. This section allows the Scottish Ministers to make regulations for such further incidental, supplementary, transitional, transitory or saving provision as they consider appropriate. Under section 24(3), such regulations are subject to the affirmative procedure if they add to, replace or leave out any part of an Act and are otherwise subject to the negative procedure. Regulations subject to the affirmative procedure are laid before the Parliament in draft form and require the approval of the Parliament in order to come into force. Regulations subject to negative procedure are laid before the Parliament after they are made and come into force on the day specified in the regulations unless annulled by the Parliament within 40 days of being laid.

Section 24: Regulation-making powers

57. This section specifies the parliamentary procedure to which regulations made under the Act are subject. Those subject to the affirmative procedure (explained in paragraph 11) are:
- regulations that contain the code, as required by section 1 of the Act;
 - regulations which define the permitted maximum for a financial penalty, under section 10;
 - regulations to exclude any provisions of the code from being subject to arbitration by the adjudicator, under section 14;
 - regulations making provision about the fee to be paid by tenants in respect of arbitrations that go before the adjudicator, and making provision about payments in respect of expenses for such arbitrations, under section 17; and
 - regulations making ancillary provision, under section 23, if that provision amends an Act.
58. As noted above, regulations under section 23 are subject to the negative procedure if they do not amend any legislation (or amend only subordinate legislation).
59. Regulations under the following provisions, not mentioned in section 24, are not subject to either the affirmative or negative procedure, and require only to be laid before the Parliament (by virtue of section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010):
- regulations to repeal section 4 once it is spent, and
 - regulations to bring into force those provisions of the Act not listed in section 25(1) (see below).

Section 25: Commencement

60. Sections 3 (duty to act consistently with regulatory principles), 4 (Scottish Ministers' duty to seek to make code and appoint adjudicator) and 5 (review of the code and adjudicator's performance), together with Part 3 (interpretation) and Part 4 (final provisions), came into force on the day after the Act received Royal Assent. This enables the Scottish Government to lay regulations containing a Scottish Pubs Code, and appoint a Scottish Pubs Code Adjudicator, within two years of the day after Royal Assent (as required by section 4(1)). It also ensures that the review processes are enabled and ready for when those things happen, that the relevant definitions have statutory effect, and that the Scottish Government has the power to make other relevant regulations. Scottish Ministers will determine by regulations (under section 24(2)) when the remaining parts of the Act come into force.