
Status: Point in time view as at 05/05/2021.

Changes to legislation: There are currently no known outstanding effects for the Tied Pubs (Scotland) Act 2021, Schedule 1. (See end of Document for details)

SCHEDULE 1

(introduced by section 1)

THE SCOTTISH PUBS CODE

Requirement to provide information

- 1 (1) The code may require pub-owning businesses to produce information and provide it to—
- (a) tenants of tied pubs,
 - (b) prospective tenants of tied pubs,
 - (c) the adjudicator.
- (2) For example, the code may require pub-owning businesses to provide tenants with rent assessments.
- (3) The code may impose requirements on pub-owning businesses as to—
- (a) the methodology by which information that is to be provided in accordance with the code is to be produced, and
 - (b) the manner and form in which the information is to be provided.
- (4) Requirements of the kind mentioned in sub-paragraph (3) may be specified in the code by reference to documents described in the code (including documents that do not exist at the time the provision of the code referring to them is made).

Requirement to comply with adjudicator's directions following an investigation

- 2 The code must provide that a pub-owning business is required to comply with a direction given to it under paragraph (a) or (b) of section 9(2).

Restriction on enforcing certain terms of agreement

- 3 (1) The code—
- (a) must provide that a pub-owning business is prohibited from enforcing a term of an agreement of a kind described in sub-paragraph (2),
 - (b) may provide that a pub-owning business is prohibited from enforcing a term of an agreement of any other kind that is described in the code.
- (2) The following are the kinds of term referred to in sub-paragraph (1)(a)—
- (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.

Requirement to offer guest beer agreement

- 4 (1) The code must require a pub-owning business to offer to enter into a guest beer agreement with a tied-pub tenant in certain circumstances.
- (2) The code is to specify the circumstances in which the offer must be made.

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- (3) 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 any other criteria specified in the code.

Requirement to offer market rent only lease

- 5 (1) The code must require a pub-owning business—
- (a) to offer to enter into a market rent only lease with a tied-pub tenant who requests that the offer be made (but see sub-paragraph (3)(b)),
 - (b) to make that offer by offering to modify the terms of any existing agreement only to the extent that is necessary for the lease in relation to the pub to be a market rent only lease (but see sub-paragraph (3)(c)),
 - (c) to use its best endeavours to enter into a market rent only lease with the tenant as soon as possible following the tenant's request that the business offer to enter into such a lease.
- (2) A market rent only lease means a lease that—
- (a) sets 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 a procedure described in the code, or
 - (ii) in the event that no agreement is reached in accordance with that procedure, the market rent,
 - (b) imposes neither a product tie nor a service tie in relation to the pub,
 - (c) complies with any requirements set out in the code as to the terms that a lease must contain in order to be a market rent only lease, and
 - (d) does not contain any unreasonable terms.
- (3) The code may specify—
- (a) descriptions of terms that are to be regarded as unreasonable for the purpose of determining whether a lease is a market rent only lease,
 - (b) circumstances in which a pub-owning business need not offer to enter into a market rent only lease with a tied-pub tenant (including, for example, where an agreement to invest in a tied pub has been entered into),
 - (c) circumstances in which a pub-owning business—
 - (i) need not offer a market rent only lease by making an offer in the terms described by sub-paragraph (1)(b), but
 - (ii) may make the offer in another way (including by offering to modify the terms of an existing agreement in a way other than that so described or by offering to enter into a new lease).
- (4) In this paragraph—
- “lease” includes any agreement between the landlord and the tenant of a pub that relates to the tenant's occupation of the pub or the activities carried on in the pub,
- “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—

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- (a) 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
 - (b) the pub will continue to be a pub,
- “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 section 20(2)),
- “service tie” means a contractual obligation which requires that the tenant of a pub receive a service, other than insurance, from—
- (a) the landlord of the pub, or
 - (b) a person nominated by the landlord.

- (5) References in sub-paragraph (4) to the landlord of a pub includes any person who is a group undertaking in relation to the person who is actually the landlord.

Market rent only lease: further provision

- 6 In describing the procedure mentioned in paragraph 5(2)(a), the code may in particular—
- (a) specify a period for negotiation under the procedure,
 - (b) require that a person (referred to in this paragraph as a rent assessor) be appointed to determine the market rent in the event that no agreement is reached by the end of any negotiation period the code specifies,
 - (c) require that a rent assessor be appointed—
 - (i) by the pub-owning business and the tied-pub tenant acting jointly, or
 - (ii) in the event that they cannot agree, by the adjudicator,
 - (d) require that the adjudicator set criteria that a person must meet in order to be appointed as a rent assessor,
 - (e) require that the rent assessor determine the market rent within a period specified in the code.

Generality of enabling power unaffected

- 7 Nothing in this schedule is to be taken to limit the requirements and restrictions that may be imposed on pub-owning businesses by regulations under section 1.

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