

SCHEDULE 1 THE SCOTTISH PUBS 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—
- (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,

Status: This is the original version (as it was originally enacted).

- (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.