

TIED PUBS (SCOTLAND) ACT 2021

EXPLANATORY NOTES

THE ACT

Part 1 – the Code and the Adjudicator

Section 1: Scottish Pubs Code

10. This section requires the Scottish Ministers to make regulations to introduce a Scottish Pubs Code, which will set out rules and procedures to govern the relationship between pub-owning businesses and their tied tenants. The code will be included in a Scottish statutory instrument which (under section 4) must be laid in draft before the Scottish Parliament no later than two years after section 1 comes into force (which is on the day after the Act receives Royal Assent). Under section 24, the instrument will be subject to the affirmative procedure in the Scottish Parliament, which means that a draft must be approved by resolution of the Parliament before the regulations can be made.
11. This section also introduces schedule 1 which sets out various details relating to the Scottish Pubs Code.

Section 2: Scottish Pubs Code Adjudicator

12. This section establishes a Scottish Pubs Code Adjudicator (a separate office from the Pubs Code Adjudicator that governs a Pubs Code in England and Wales). The adjudicator's role is to apply the code and consider disputes and alleged breaches. The section also introduces schedule 2 which contains details of the adjudicator's role and powers etc., including the adjudicator's power to impose a levy on pub-owning businesses.

Section 3: Duty to act consistently with regulatory principles

13. The Scottish Ministers must use best endeavours to ensure that the code is consistent with three regulatory principles: fair and lawful dealing by pub-owning companies to their tenants; that tied tenants should be no worse off than if they were not bound by any product or service tie (as defined in the Act); and that a tied agreement offers a fair share of risk and reward to pub-owning businesses and their tenants.
14. Subsection (2) states that the adjudicator must also use best endeavours to act consistently with these three principles. It is expected that the adjudicator will apply the three principles to decision-making and that they will act as an underpinning framework for processes set out in the Act, such as investigations and arbitrations.

Section 4: Scottish Ministers' duty to seek to make code and appoint adjudicator

15. Subsection (1) requires the Scottish Ministers to lay before the Scottish Parliament draft regulations containing the Scottish Pubs Code, and appoint a Scottish Pubs Code Adjudicator, within two years of section 4 coming into force (which was the day after the Bill received Royal Assent – see section 25). These two things need not be done on the same day (subsection (2)).

16. If the Parliament approves the regulations (as laid in draft, in the form of a Scottish statutory instrument), the Scottish Government must then make the regulations (subsection (3)). Subsection (4) provides for section 4 to be repealed once its requirements have been fulfilled.

Section 5: Review of the code and adjudicator's performance

17. This section states that the Scottish Ministers must carry out a first review of the Scottish Pubs Code and the adjudicator's performance as soon as is practicable after 31 March in the second year following the year in which the adjudicator is appointed. Further reviews must then be carried out every three years after that. Once a review has been completed, the Scottish Ministers must publish a report of the review's findings and lay a copy of the report before the Scottish Parliament. This will allow for consideration and scrutiny by the Parliament as appropriate.
18. Subsection (2) specifies that reviews of the code must look at how far the three regulatory principles have been met and whether the code should be revised to reflect these principles more fully.
19. Subsection (3) specifies that reviews of the adjudicator can cover anything that Ministers consider appropriate. However, a review must consider how effective the adjudicator has been at enforcing the code and may also consider whether any changes are required to financial penalty and/or fees and expenses regulations.

Section 6: Ministerial guidance to the adjudicator

20. Under this section, the Scottish Ministers may issue guidance to the adjudicator following a review and the adjudicator must take any such guidance into account.