



4 June 2024
By email

Dear Economy and Fair Work Committee member,

The Scottish Pubs Code Regulations 2024

Ahead of discussions on the above regulations at the committee meeting this Wednesday, we wish to highlight several concerns with the regulations as currently drafted, on behalf of our impacted members

Our concerns include, but are not limited to the following:

- **Lack of a definition of 'tenant'**: Franchise agreements, managed operator agreements, and tenancies at will (TaW) are out of scope of the legislation, as they are not tied tenancies, but the lack of clarity when distinguishing between a tied pub tenant, compared with other types of tenant on agreements outside the scope of the legislation could lead to misinterpretation. Similarly, the lack of a definition for "short agreement", unlike in England and Wales, could also be misinterpreted to go beyond tied agreements, which was not the intention of the act.
- **Regulation 10**: The information requirements are onerous, for example a requirement for a pub-owning business to provide a prospective tenant with details of completed repairs undertaken on the tied pub covering the period of the previous tenancy as required by regulation 10(1d)(i). A tied tenant may also undertake work on a pub, in addition to work undertaken by a pub company. Tied tenants are not currently required to inform a pub-owning business about any work they undertake but the current wording would place an added burden on a tied-pub tenant to notify a pub-owning business of any work they undertake on a pub and is therefore not something that could currently be adhered to. We believe that some of the information will also be protected by GDPR. The requirement on 'publicly available reports' is also exceptionally wide ranging.
- **Regulation 12**: The amount of information required on rent assessments is over onerous and counterproductive, effectively requiring different sets of P&L and appears to be outside the RICS guidance, which is adhered to under the England & Wales Pubs Code.
- **Guest Beer Provision**: We believe that 5,000 HL annual production limit is a reasonable level, however we are unclear how eligibility could be confidently determined. Furthermore, there is a lack of detail on modifications to guest beer agreements and changes to guest beer which could create unnecessary confusion and conflict.
- **Market Rent Only**: A lack of clarity around the investment waiver, as well as the questions around certain elements applying retrospectively is also a cause for concern.

We have had positive dialogue with the Minister and welcome his recent letter confirming amendments will be made. We will continue to engage with the Scottish Government during this amendment process to hopefully reach a workable resolution and ensure that the sector's contribution to both local and national economies is minimally impacted.

However, the points above are without prejudice to our continued position that there was no evidence for, or need for, bringing the primary legislation forward in the first instance. This was also the

conclusion of the Economy, Energy and Fair Work Committee in their [Stage 1 report](#), and [the Scottish Government's report](#). The introduction and subsequent passage of the legislation has resulted in multi-million investments in Scotland being delayed, diverted, or cancelled, which has subsequently had a negative impact on jobs, local economies and been detrimental to the sector overall.

We also remain open to discussions with the committee and its members if they wish for further detail or direct engagement with our impacted members.

Best wishes,

Paul Togneri
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Beer & Pub Association