

**Economy and Fair Work Committee**  
**Wednesday 26 June 2024**  
**20<sup>th</sup> Meeting, 2024 (Session 6)**

## **Note by the Clerk on Tied Pubs (Miscellaneous Amendment) (Scotland) Regulations 2024 [draft]**

### **Overview**

1. At this meeting, the Committee will take evidence from the Minister for Employment and Investment and officials on the Tied Pubs (Miscellaneous Amendment) (Scotland) Regulations 2024, before debating a motion in the name of the Minister inviting the Committee to recommend approval of the instrument.
2. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below—

**Title of instrument:** [The Tied Pubs \(Miscellaneous Amendment\) \(Scotland\) Regulations 2024 \[draft\]](#)

**Laid under:** [The Tied Pubs \(Scotland\) Act 2021](#)

**Laid on:** 7 June 2024

**Procedure:** Affirmative

**Lead committee to report by:** 19 September 2024

**Commencement:** If approved, the instrument comes into force on 6 October 2024

### **Procedure**

3. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
4. Once laid, the instrument is referred to—
  - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds; and
  - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.

6. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee—
  - an evidence session with the Minister and officials; followed by
  - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
7. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument.

## **Delegated Powers and Law Reform Committee consideration**

8. The DPLR Committee considered the instrument on 18 June 2024 and reported in its [45<sup>th</sup> Report, 2024](#).
9. It noted that the draft instrument fulfils commitments made by the Scottish Government to correct the previously identified errors in earlier instruments and made no recommendations in relation to this instrument.

## **Purpose of the instrument**

10. These regulations amend two instruments laid by the Scottish Government on 2 and 3 May 2024, under the [Tied Pubs \(Scotland\) Act 2021](#)—
  - [The Scottish Pubs Code Regulations 2024](#)

This created a Scottish Pubs Code for tied pubs as required by the Tied Pubs (Scotland) Act 2021.
  - [The Tied Pubs \(Fees and Financial Penalties\) \(Scotland\) Regulations 2024](#)

This set out the maximum financial penalty the Scottish Pubs Code Adjudicator can impose on a pub-owning business for not complying with the code.
11. The DPLR Committee drew both instruments to the attention of the Parliament and noted the Scottish Government's undertaking to bring forward corrections.
12. The Tied Pubs (Miscellaneous Amendment) (Scotland) Regulations 2024 make corrective changes to address the technical points raised by the DPLR Committee. They also amend the coming into force date of the Scottish Pubs Code to enable the Scottish Government to undertake further consultation on the Code, following stakeholder representations.
13. The Policy Note accompanying the instrument is included in the annexe.

## **Evidence received**

14. The Economy and Fair Work Committee [considered the initial five instruments relating to the Tied Pubs \(Scotland\) Act 2021 on 5 June 2024.](#)
15. The Committee noted the issues raised by the DPLR Committee and also that representations had been made by stakeholders about the draft Scottish Pubs Code. The Committee recommended to the Parliament that the instruments be approved, following the Minister's undertaking to consult further and bring forward amending regulations would be laid.

## **Report**

16. **Following today's consideration and decision, a draft report will be prepared by the clerks. The Committee is invited to delegate responsibility for agreeing the draft report to the Convener.**

**Clerks to the Committee  
June 2024**

## Annexe: Scottish Government Policy Note

### POLICY NOTE

#### THE TIED PUBS (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2024

#### SSI 2024/XXX

The above instrument was made in exercise of the powers conferred by sections 1, 7, 10(3), 17(1) and 23 and schedule 1 of the Tied Pubs (Scotland) Act 2021. The instrument is subject to affirmative procedure.

#### Summary Box

The purpose of this instrument is to make corrective changes to address points raised by the Delegated Powers and Law Reform Committee on 21 May 2024 on the secondary legislation package designed to implement the Tied Pubs (Scotland) Act 2021. The instrument also changes the coming into force date to enable further consultation to occur on the Scottish Pubs Code.

#### Policy Objectives

The Tied Pubs (Scotland) Act 2021 (“the Act”) received Royal Assent in May 2021. The purpose of the Act is to regulate the relationship between tied pub landlords and tenants through the introduction of a statutory Scottish Pubs Code and the appointment of a Scottish Pubs Code Adjudicator. The role of the Adjudicator is to oversee and enforce the code.

A number of secondary legislation instruments were laid over 2 and 3 May to implement the Tied Pubs (Scotland) Act 2021. [The Delegated Powers and Law Reform Committee](#)<sup>1</sup> in their scrutiny of the instruments raised two points in relation to two instruments:

On the Scottish Pubs Code Regulations 2024, they drew the attention of the Parliament to the SSI on the general reporting ground. This is because the end of the rent assessment period should be after the tenant has received the market rent only lease offer, not the rent determination.

On the Tied Pubs (Fees and Financial Penalties) (Scotland) Regulations 2024 they drew to the attention of the Parliament their view that “group undertaking” was not sufficiently clear.

This SSI seeks to resolve these drafting issues.

In addition, the SSI moves the coming into force date of the Scottish Pubs Code Regulations 2024 and the Tied Pubs (Fees and Financial Penalties) (Scotland) Regulations 2024 to 31 March 2025. This will enable the Scottish Government to undertake a short targeted consultation to consider concerns raised by the tied pubs sector on the Scottish Pubs Code.

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<sup>1</sup> [Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 21 May 2024](#)

The two principal instruments, the Scottish Pubs Code Regulations 2024 and the Tied Pubs (Fees and Financial Penalties) (Scotland) Regulations 2024, have not been approved by Parliament and have not been made at the time of laying the amendment SSI. If the two principal instruments are not approved by Parliament, then the amendment SSI will be withdrawn.

### **EU Alignment Consideration**

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

### **Consultation**

No consultation was carried out on this SSI, as they represent corrective changes.

The change to the coming into force date will enable further targeted consultation on the Scottish Pubs Code.

### **Impact Assessments**

No impact assessments have been prepared for this amending SSI given the corrective changes the SSI makes.

### **Financial Effects**

The Minister for Employment and Investment confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business, as they make corrective changes and delay the introduction of changes through the Scottish Pubs Code.

Scottish Government  
Agriculture and Rural Economy Directorate  
*June 2024*