

# Tied Pubs (Scotland) Bill

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## 2nd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the second day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

### Groupings of amendments

#### **Scottish Pub Code: requirement to offer market rent only lease**

48, 49, 50, 51, 52, 5, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 67A, 67B, 67C, 6, 7, 8, 68, 69, 70, 71, 72, 73, 74, 75, 77, 76, 78, 79, 80, 81, 82, 83, 84

#### *Notes on amendments in this group*

Amendment 48 pre-empts amendments 49, 50, 51, 52, 5, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 67A, 67B, 67C, 6, 7, 8, 68, 69, 70, 71, 72, 73, 74, 75, 77, 76, 78 and 79

Amendment 53 pre-empts amendments 54, 55 and 56

Amendment 57 pre-empts amendments 58 and 59

Amendment 77 pre-empts amendments 76 and 78

#### **Scottish Pubs Code Adjudicator and Scottish Ministers' duty to seek to make code and appoint adjudicator**

85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 99A, 100, 103, 101, 102, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 9, 122, 123, 124, 125, 126, 127, 129, 128, 131, 130, 130A, 130B, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 10, 11, 143, 144, 145, 146, 1, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 2, 164, 165, 166, 167, 168, 3, 169, 170, 171, 172, 173, 178, 185, 196, 200, 213, 216, 224, 229, 234, 247, 250, 259

#### *Notes on amendments in this group*

Amendment 90 pre-empts amendments 91, 92, 93, 94, 95 and 96

Amendment 98 pre-empts amendments 99 and 99A

Amendment 103 pre-empts amendments 101 and 102

Amendment 105 pre-empts amendment 106

Amendment 112 pre-empts amendments 113, 114, 115, 116, 117, 118 and 119

Amendment 122 pre-empts amendments 123 and 124

Amendment 125 pre-empts amendments 126 and 127

Amendment 129 pre-empts amendment 128

Amendment 131 pre-empts amendments 130, 130A and 130B  
Amendment 134 pre-empts amendments 135 and 136  
Amendment 139 pre-empts amendment 140  
Amendment 142 pre-empts amendments 10 and 11  
Amendment 143 pre-empts amendment 144  
Amendment 146 pre-empts amendments 1, 148, 149, 150, 151, 152 and 153  
Amendments 1, 148, 149, 150 and 151 are direct alternatives  
Amendment 152 pre-empts amendment 153  
Amendment 153 pre-empts amendments 154, 155 and 156  
Amendment 162 pre-empts amendment 163  
Amendments 2, 164 and 165 are direct alternatives  
Amendment 167 pre-empts amendment 168  
Amendments 3, 169, 170 and 171 are direct alternatives

### **Unenforceability of contract terms**

174, 175

### **Investigation by the adjudicator**

176, 177, 179, 180, 181, 182, 183, 184, 186, 187, 188, 189, 189A, 191, 190, 192, 193, 194, 12, 195, 197, 198, 199, 202, 203, 204, 205, 206, 207, 208, 209, 210, 13, 211, 212, 4, 214, 215, 218, 219, 220, 221, 222, 223, 217, 225, 226, 227, 228, 248, 249

#### *Notes on amendments in this group*

Amendment 191 pre-empts amendments 190 and 192  
Amendment 194 pre-empts amendments 12 and 195  
Amendment 12 pre-empts amendment 195  
Amendment 13 pre-empts amendment 211

### **Fees and expenses payable**

230, 231, 232, 233, 14, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246

#### *Notes on amendments in this group*

Amendment 243 pre-empts amendment 244

### **Reports on avoidance**

251, 252, 253, 254, 255, 256, 257, 258

### **Interpretation**

260, 260A, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 272A, 272B, 272C, 272D, 273, 274, 275, 276, 277

#### *Notes on amendments in this group*

Amendment 263 pre-empts amendment 264  
Amendments 272A, 272B, 272C and 272D are direct alternatives  
Amendment 273 pre-empts amendment 274

### **Regulation-making powers**

278, 279, 280, 281

### **Commencement**

282, 283

**Expiry of Act**

284, 284A, 284B, 285

*Notes on amendments in this group*

Amendments 284A and 284B are direct alternatives

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### Amendments in debating order

#### **Scottish Pub Code: requirement to offer market rent only lease**

##### **Graham Simpson**

48 In schedule 1, page 12, line 13, leave out paragraphs 5 and 6

##### **Maurice Golden**

49 In schedule 1, page 12, line 13, leave out paragraphs 5 and 6 and insert—

*<Market rent only lease*

- (1) The code may include provision enabling a tied-pub tenant to request a pub-owning business to enter into negotiations for a market rent only lease.
- (2) Before including any provision for a market rent only lease in the code, the Scottish Ministers must consult such bodies as they consider to be representative of the tied pubs sector.
- (3) In this paragraph, “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,
    - (iv) between parties who are all acting knowledgeably, prudently and willingly, and
  - (b) the pub will continue to be a pub.>

##### **Graham Simpson**

50 In schedule 1, page 12, line 13, at beginning insert <Subject to subsection (2A)>

##### **Graham Simpson**

51 In schedule 1, page 12, line 14, at beginning insert <where an event specified in sub-paragraph (1A) or sub-paragraph (1B) has occurred>

##### **Richard Lyle**

52\* In schedule 1, page 12, line 14, after <requests> insert <in terms of paragraph 6F>

##### **Jamie Hepburn**

5 In schedule 1, page 12, line 15, after <made> insert <(but see sub-paragraph (3)(aa))>

##### **Rachael Hamilton**

53 In schedule 1, page 12, leave out lines 16 to 18

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**Rachael Hamilton**

- 54 In schedule 1, page 12, leave out lines 16 to 18 and insert—
- <(b) to make that offer by offering to enter into a new lease for a term of at least 5 years or, if the unexpired term of any existing lease is less than 5 years, for at least the length of the unexpired term,>

**Richard Lyle**

- 55 In schedule 1, page 12, line 16, after second <to> insert <enter into a new lease or>

**Richard Lyle**

- 56 In schedule 1, page 12, line 16, leave out <agreement> insert <lease>

**Alexander Stewart**

- 57 In schedule 1, page 12, leave out lines 19 to 21

**Michelle Ballantyne**

- 58 In schedule 1, page 12, leave out lines 19 to 21 and insert—
- <( ) The code may specify the period within which the parties are to enter into a market rent only lease following its agreement or determination.>

**Richard Lyle**

- 59 In schedule 1, page 12, line 21, at end insert—
- <according to the provisions of this schedule.>

**Graham Simpson**

- 60 In schedule 1, page 12, line 21, at end insert—
- <(1A) A requirement to offer a market rent only lease is triggered where the tied pub tenant—
    - (a) receives a notification of a significant increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant,
    - (b) receives a rent assessment proposal from the pub-owning business,
    - (c) sends the pub-owning business a relevant analysis which demonstrates that a trigger event had occurred.
  - (1B) In sub-paragraph (1A)—
    - “significant increase”, in relation to the price at which a product or service which is subject to a product or service tie is supplied to a tied pub tenant, has the meaning given in paragraphs 6A to 6D,
    - a “relevant analysis” means a written analysis of the level of trading which is forecast for a period of 12 months or more,
    - “trigger event” has the meaning given in paragraph 6E.>

**Michelle Ballantyne**

- 61 In schedule 1, page 12, line 23, leave out <sets the rent payable in respect of the tenant’s occupation of the pub> and insert <requires the tenant to pay in respect of that occupation>

**THIS IS NOT THE MARSHALLED LIST**

**Michelle Ballantyne**

- 62 In schedule 1, page 12, leave out lines 24 and 25 and insert—  
<( ) such rent as may be agreed between the pub-owning business and the tied-pub tenant in accordance with the MRO,>

**Michelle Ballantyne**

- 63 In schedule 1, page 12, line 30, leave out <a market rent only lease> and insert <an MRO-compliant lease>

**Richard Lyle**

- 64 In schedule 1, page 12, line 31, at end insert <, and for the avoidance of doubt a stocking requirement is to be deemed not to be an unreasonable term.>

**Michelle Ballantyne**

- 65 In schedule 1, page 12, line 31, at end insert—  
<( ) permits the tenant to occupy the tied-pub under a lease which is MRO-compliant.>

**Michelle Ballantyne**

- 66 In schedule 1, page 12, line 31, at end insert—  
<( ) is for a term at least as long as the existing tied lease.  
( ) The pub-owning business may offer a market rent only lease for a term longer than the existing tied lease but nothing in the code must require them to do so.>

**Jeremy Balfour**

- 67 In schedule 1, page 12, line 31, at end insert—  
<(2A) The code must specify that a tied-pub tenant is eligible to request that the offer of a market only lease be made, only where the tenant—  
(a) has been served with a notice that the pub-owning business wishes to initiate a rent review,  
(b) is within 1 year of the expiry of an existing lease and the pub-owning business has not served notice to quit,  
(c) has been a tied-tenant of that tied pub for at least 5 years,  
(d) has been served with a notice of a significant increase in the price at which a product or service which is subject to a product tie or service tie is supplied,  
(e) has not have been in receipt of a qualifying investment within the last 7 years, and  
(f) has not waived the right to request a market only lease.  
(2B) The code must specify what constitutes a “significant price increase” and a “qualifying investment” for the purposes of sub-paragraph (2A).>

**Maurice Golden**

- 67A As an amendment to amendment 67, line 6, leave out <1 year> and insert <2 years>

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**Maurice Golden**

**67B** As an amendment to amendment 67, line 8, leave out <5> and insert <7>

**Maurice Golden**

**67C** As an amendment to amendment 67, line 11, leave out <7> and insert <10>

**Jamie Hepburn**

**6** In schedule 1, page 12, line 34, at end insert—

<(aa) circumstances in which a pub-owning business need not offer to enter into a market rent only lease with a tied-pub tenant,>

**Jamie Hepburn**

**7** In schedule 1, page 12, line 35, after <business> insert <—

( )>

**Jamie Hepburn**

**8** In schedule 1, page 12, line 36, at end insert <, but

( ) 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).>

**Maurice Golden**

**68** In schedule 1, page 12, line 36, at end insert—

<( ) A tied-pub tenant may, in writing, waive any rights under this paragraph.>

**Graham Simpson**

**69** In schedule 1, page 12, line 36, at end insert—

<( ) The code may only impose a requirement under paragraph 5(1) once—

(a) the Scottish Ministers have undertaken—

(i) a consultation on the requirement to offer market rent only release,

(ii) an assessment of the economic impact of that requirement,

(iii) an analysis of the extent to which that requirement conforms with Article 1 of the First Protocol to the European Convention on Human Rights,

(b) 2 years have passed since the Scottish Pubs Code Adjudicator was established under section 2 of this Bill.>

**Graham Simpson**

**70** In schedule 1, page 12, line 36, at end insert—

<( ) The adjudicator must, if required to do so by a pub-owning business, certify that certain forms of agreement meet the definition (save as to the rent) of a market rent only release.

( ) Any agreement so certified must be endorsed as such on the lease and must be conclusive evidence that it is compliant with the code.>

**THIS IS NOT THE MARSHALLED LIST**

**Maurice Golden**

- 71 In schedule 1, page 12, leave out lines 38 and 39

**Richard Lyle**

- 72 In schedule 1, page 13, line 21, at end insert—

<(A1) The code may make provision about the procedure to be followed after the submission of an MRO notice in terms of paragraph 6F (referred to as “the MRO procedure”).>

**Richard Lyle**

- 73 In schedule 1, page 13, line 22, leave out <In describing the procedure mentioned in paragraph 5(2)(a), the code> and insert <Provision made under sub-paragraph (A1)>

**Alexander Stewart**

- 74 In schedule 1, page 13, leave out line 24

**Richard Lyle**

- 75 In schedule 1, page 13, line 24, leave out <period for negotiation under the procedure> and insert <reasonable period for negotiation during which the pub-owning business and the tied-pub tenant may seek to agree the rent to be payable in respect of the tied-pub tenant's occupation of the premises concerned under the proposed market rent only lease>

**Rachael Hamilton**

- 77 In schedule 1, page 13, leave out lines 30 to 32

**Richard Lyle**

- 76 In schedule 1, page 13, line 30, leave out <adjudicator> and insert <Lands Tribunal for Scotland>

**Richard Lyle**

- 78 In schedule 1, page 13, line 31, leave out <adjudicator> and insert <Lands Tribunal for Scotland>

**Richard Lyle**

- 79 In schedule 1, page 13, line 33, leave out <period specified on the code> and insert <specified reasonable period>

**Michelle Ballantyne**

- 80 In schedule 1, page 13, line 34, at end insert—

<( ) exempt certain types of agreement from the MRO provisions of the code.>

**Alexander Stewart**

- 81 In schedule 1, page 13, line 34, at end insert—

<( ) In describing the procedure mentioned in paragraph 5(2)(a), the code must specify a period for negotiation under the procedure.>

**Richard Lyle**

- 82\* In schedule 1, page 13, line 34, at end insert—



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<( ) The code may make provision for—

- (a) the tenancy under which the tied pub is occupied, and
- (b) any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the tenancy,

as they are in force when a notice is given by virtue of paragraph 6F to continue to have effect until such time as the MRO procedure has come to an end (regardless of whether any of the agreements would or could otherwise cease to have effect before that time).>

### Graham Simpson

83 In schedule 1, page 13, line 34, at end insert—

<6A(1) For the purposes of paragraph 5, a “significant increase” in the price of beer supplied to a tied pub tenant takes place on the issue to the tied pub tenant of an invoice for beer (“the relevant invoice”) where the following two conditions are met.

(2) The first condition is that—

- (a) one or more invoices for beer were issued to the tied pub tenant in the comparison period, and
- (b) those invoices included at least one for beer of the same kind as beer invoiced in the current period.

(3) The second condition is that—

$$\left( \frac{A - B}{B} \times 100 \right) > \left( \frac{C - D}{D} \times 100 \right) + 3$$

where—

A is the average unit price of current period beer,

B is the average unit price of comparison period beer,

C is the level of the producer price index on the day the relevant invoice is issued,

D is the level of the producer price index on the day 12 months before the relevant invoice is issued.

(4) In this paragraph—

- (a) “beer” means beer supplied under a product tie,
- (b) “current period beer” means all beer invoiced to the tied pub tenant in the current period, excluding any of a kind not invoiced to the tied pub tenant in the comparison period,
- (c) “comparison period beer” means all beer invoiced to the tied pub tenant in the comparison period, excluding any of a kind not invoiced to the tied pub tenant in the current period,
- (d) beer invoiced in a period is “of the same kind” as beer invoiced in another period if they are—
  - (i) of the same brand, and
  - (ii) sold in the same units,
- (e) “the current period” means the period of 4 weeks ending with the day on which the relevant invoice is issued,

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- (f) “the comparison period” means the period of 4 weeks ending with the day 12 months before the day on which the relevant invoice is issued,
  - (g) “invoice for beer” includes an invoice which covers (in addition to beer) products other than beer, or services; and references to beer being invoiced are to be read accordingly,
  - (h) references to prices are to prices exclusive of value added tax but inclusive of excise duty,
  - (i) “the producer price index” means the producer price index published by the Statistics Board in respect of beer (including duty),
  - (j) references to the level of the producer price index on any day are to the level of that index, in the index most recently published before the end of that day, in respect of the most recent month covered by that publication.
- (5) For the purposes of this schedule, the “Statistics Board” is the Board as established under section 1 of the Statistics and Registration Services Act 2007.
- 6B(1) For the purposes of paragraph 5, a “significant increase” in the price of alcoholic drink supplied to a tied pub tenant takes place on the issue to the tied pub tenant of an invoice for alcoholic drinking (“the relevant invoice”) where the following two conditions are met.
- (2) The first condition is that—
    - (a) one or more invoices for alcoholic drink were issued to the tied pub tenant in the comparison period, and
    - (b) those invoices included at least one for alcoholic drink of the same kind as alcoholic drink invoiced in the current period.
  - (3) The second condition is that—
$$\left( \frac{A - B}{B} \times 100 \right) > \left( \frac{C - D}{D} \times 100 \right) + 6$$
where—
    - A is the average unit price of current period alcoholic drink,
    - B is the average unit price of comparison period alcoholic drink,
    - C is the level of the producer price index on the day the relevant invoice is issued,
    - D is the level of the producer price index on the day 12 months before the relevant invoice is issued.
  - (4) In this paragraph—
    - (a) “alcoholic drink” means alcoholic drink supplied under a product tie, other than beer,
    - (b) “current period alcoholic drink” means all alcoholic drink invoiced to the tied pub tenant in the current period, excluding any of a kind not invoiced to the tied pub tenant in the comparison period,
    - (c) “comparison period alcoholic drink” means all alcoholic drink invoiced to the tied pub tenant in the comparison period, excluding any of a kind not invoiced to the tied pub tenant in the current period,

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- (d) alcoholic drink invoiced in a period is “of the same kind” as alcoholic drink invoiced in another period if they are—
    - (i) of the same category (see sub-paragraph (5)), and
    - (ii) sold in the same units,
  - (e) “the current period” means the period of 4 weeks ending with the day on which the relevant invoice is issued,
  - (f) “the comparison period” means the period of 4 weeks ending with the day 12 months before the day on which the relevant invoice is issued,
  - (g) “invoice for alcoholic drink” includes an invoice which covers (in addition to alcoholic drink) products other than alcoholic drink, or services; and references to alcoholic drink being invoiced are to be read accordingly,
  - (h) references to prices are to prices exclusive of value added tax but inclusive of excise duty,
  - (i) “the producer price index” means the producer price index published by the Statistics Board in respect of alcoholic beverages (including duty),
  - (j) references to the level of the producer price index on any day are to the level of that index, in the index most recently published before the end of that day, in respect of the most recent month covered by that publication.
- (5) For the purposes of sub-paragraph (4)(d)(i) the “categories” of alcoholic drink are—
- (a) blended whiskies,
  - (b) single malt whiskies,
  - (c) gin,
  - (d) vodka,
  - (e) brandy,
  - (f) spirits not within any of sub-sub-paragraphs (a) to (e),
  - (g) red wine,
  - (h) white wine,
  - (i) rose wine,
  - (j) cider,
  - (k) alcoholic drink not within any of sub-sub-paragraphs (a) to (j).
- 6C (1) For the purposes of paragraph 5, a “significant increase” in the price of non-alcoholic products supplied to a tied pub tenant takes place on the issue to the tied pub tenant of an invoice for non-alcoholic products (“the relevant invoice”) where the following two conditions are met.
- (2) The first condition is that—
- (a) one or more invoices for non-alcohol products were issued to the tied pub tenant in the comparison period, and
  - (b) those invoices included at least one for non-alcohol products of the same kind as non-alcohol products invoiced in the current period.

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- (3) The second condition is that, for any of the non-alcohol products producer price indices (“the applicable producer price index”)—

$$\left( \frac{A-B}{B} \times 100 \right) > \left( \frac{C-D}{D} \times 100 \right) + 20$$

where—

A is the average unit price of current period non-alcohol products,

B is the average unit price of comparison period non-alcohol products,

C is the level of the applicable producer price index on the day the relevant invoice is issued,

D is the level of the applicable producer price index on the day 12 months before the relevant invoice is issued.

- (4) In this paragraph—

- (a) “non-alcohol products” means products supplied under a product tie, other than alcoholic drink,
- (b) “current period non-alcohol products” means all non-alcohol products within the applicable producer price index invoiced to the tied pub tenant in the current period, excluding any of a kind not invoiced to the tied pub tenant in the comparison period,
- (c) “comparison period non-alcohol products” means all non-alcohol products within the applicable producer price index invoiced to the tied pub tenant in the comparison period, excluding any of a kind not invoiced to the tied pub tenant in the current period,
- (d) non-alcohol products invoiced in a period are “of the same kind” as non-alcohol products invoiced in another period if they are—
  - (i) of the same category (see sub-paragraph (5)), and
  - (ii) sold in the same units,
- (e) “the current period” means the period of 4 weeks ending with the day on which the relevant invoice is issued,
- (f) “the comparison period” means the period of 4 weeks ending with the day 12 months before the day on which the relevant invoice is issued,
- (g) “invoice for non-alcohol products” includes an invoice which covers (in addition to non-alcohol products) products or services other than non-alcohol products; and references to non-alcohol products being invoiced are to be read accordingly,
- (h) references to prices are to prices exclusive of value added tax,
- (i) “the non-alcohol products producer price indices” means—
  - (i) the producer price index published by the Statistics Board in respect of food products,
  - (ii) the producer price index published by the Statistics Board in respect of soft drinks, mineral waters and other bottled waters,
- (j) references to the level of a producer price index on any day are to the level of that index, in the index most recently published before the end of that day, in respect of the most recent month covered by that publication.

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- (5) For the purposes of sub-paragraph (4)(d)(i) the “categories” of non-alcohol products are—
- (a) food,
  - (b) non-alcoholic drinks.

6D (1) For the purposes of paragraph 5, a “significant increase” in the price of services supplied to a tied pub tenant takes place on the issue to the tied pub tenant of an invoice for services (“the relevant invoice”) where the following two conditions are met.

- (2) The first condition is that—
- (a) one or more invoices for services were issued to the tied pub tenant in the comparison period, and
  - (b) those invoices included at least one for services of the same kind as services invoiced in the current period.
- (3) The second condition is that—

$$\left( \frac{A - B}{B} \times 100 \right) > \left( \frac{C - D}{D} \times 100 \right) + 20$$

where—

A is the average unit price of current period services,

B is the average unit price of comparison period services,

C is the Consumer Price Index on the day the relevant invoice is issued,

D is the Consumer Price Index on the day 12 months before the relevant invoice is issued.

- (4) In this paragraph—
- (a) “services” means services supplied under a service tie,
  - (b) “current period services” means all services invoiced to the tied pub tenant in the current period, excluding any of a kind not invoiced to the tied pub tenant in the comparison period,
  - (c) “comparison period services” means all services invoiced to the tied pub tenant in the comparison period, excluding any of a kind not invoiced to the tied pub tenant in the current period,
  - (d) services invoiced in a period are “of the same kind” as services invoiced in another period if they are—
    - (i) of the same category (see sub-paragraph (5)), and
    - (ii) sold in the same units,
  - (e) “the current period” means the period of 4 weeks ending with the day on which the relevant invoice is issued,
  - (f) “the comparison period” means the period of 4 weeks ending with the day 12 months before the day on which the relevant invoice is issued,
  - (g) “invoice for services” includes an invoice which covers (in addition to services) products; and references to services being invoiced are to be read accordingly,

## **THIS IS NOT THE MARSHALLED LIST**

- (h) references to prices are to prices exclusive of value added tax,
  - (i) “the consumer price index” means the general index of consumer prices (for all items) published by the Statistics Board,
  - (j) references to the level of the consumer price index on any day are to the level of that index, in the index most recently published before the end of that day, in respect of the most recent month covered by that publication.
- (5) For the purposes of sub-paragraph (4)(d)(i) the “categories” of services are—
- (a) the hire of gaming machines,
  - (b) property and maintenance services (including maintenance of equipment),
  - (c) financial services (including insurance),
  - (d) business services not within any of sub-sub-paragraphs (a) to (c).
- 6E (1) For the purposes of paragraph 5, an event is a “trigger event”, in relation to a tied pub tenant, only if—
- (a) conditions A and B are met; and
  - (b) either—
    - (i) the event does not affect pubs other than the tied pub, or
    - (ii) conditions C and D are met.
- (2) Condition A is that the effect of the event is to decrease the level of trade that is reasonably expected to be achieved at the tied pub in each month over a continuous period of 12 months.
- (3) Condition B is that the event is not—
- (a) connected to the personal circumstances of the tied pub tenant,
  - (b) a significant increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant,
  - (c) an extrinsic increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant, or
  - (d) an event which the tied pub tenant could reasonably have prevented, or the effects of which it could reasonably have substantially mitigated.
- (4) Condition C is that the event—
- (a) affects other pubs in the local area, but
  - (b) is unlikely to affect all pubs in Scotland.
- (5) Condition D is that the event—
- (a) is directly related to a change in the tie imposed by the pub-owning business(1) on the tied pub, or
  - (b) has an effect which is directly related to changes in the local area such as—
    - (i) changes to the local infrastructure,
    - (ii) changes to local employment,
    - (iii) long-term changes to the local economic environment,
    - (iv) changes to local environmental factors.

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- (6) An “extrinsic increase” in relation to a tied product or service means an increase in the price of the product or service due to circumstances beyond the control of the pub-owning business such as—
  - (a) an increase in the price at which the pub-owning business purchases the product or service,
  - (b) an increase in any tax or duty payable by the pub-owning business which arises from the pub-owning business’s purchase of the product or service, or
  - (c) an increase in any other tax or regulatory cost payable by the pub-owning business which affects the costs of the pub-owning business.>

### Richard Lyle

84\* In schedule 1, page 13, line 34, at end insert—

*<The MRO notice*

- 6F(1) A tied pub tenant may give a notice (an “MRO notice”) to the pub-owning business where one of the circumstances in paragraph 6G(1) is satisfied.
- (2) The MRO notice must be—
    - (a) in writing, and
    - (b) received by the pub-owning business within the period of 21 days beginning with the day on which the event mentioned in paragraph (1) occurred.
  - (3) The MRO notice must include—
    - (a) the tenant's name, postal address, email address (if any) and telephone number,
    - (b) the date on which the notice is being sent,
    - (c) the name of the tied pub in relation to which the request for an offer of a market rent only option is being made and its address,
    - (d) the date on which the event mentioned in paragraph (1) occurred, and
    - (e) a description of that event which, in the tenant's opinion, demonstrates that it is an event specified in paragraph 6G(1).
  - (4) A tied pub tenant may not give an MRO notice to the pub-owning business where—
    - (a) the tenant has already given an MRO notice under paragraph (1), and
    - (b) the MRO procedure which relates to that notice has not ended.

*Circumstances in which MRO notice may be served*

- 6G(1) The circumstances in which an MRO notice may be served are—
- (a) the tied pub tenant receives notification of a significant increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant,
  - (b) where the tied pub tenant sends the pub-owning business, during the relevant period, a relevant analysis which demonstrates that a trigger event has occurred,
  - (c) where—
    - (i) the tied pub tenant receives a rent assessment proposal sent by the pub-owning business in respect of the tenancy, and

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- (ii) the investment exception does not apply.
- (2) In sub-paragraph (1)—
  - “trigger event” means an event specified in paragraph 6H,
  - “the relevant period” means the period of 56 days beginning with the day after that on which the trigger event occurred,
  - a “relevant analysis” means a written analysis of the level of trading which is forecast for a period beginning with the day on which the trigger event occurred and ending at least 12 months later,
  - “rent assessment proposal” means a proposed increase in rent following a rent review required under the lease or which may be required in terms of the code,
  - “investment exception” means the exception specified in paragraph 6I.
- (3) The code must set out what constitutes a significant increase in the price of services and products for the purposes of sub-paragraph (1)(a).

### *Trigger events*

- 6H(1) An event is a trigger event in relation to a tied pub tenant only if—
  - (a) conditions A, B and C are met, and
  - (b) either—
    - (i) the event does not affect pubs other than the tied pub, or
    - (ii) conditions D and E are met.
- (2) Condition A is that the event—
  - (a) is beyond the control of the tied pub tenant,
  - (b) was not reasonably foreseeable, and
  - (c) has a significant impact on the level of trade that could reasonably be expected to be achieved at the tied pub.
- (3) Condition B is that the effect of the event is to decrease the level of trade that is reasonably expected to be achieved at the tied pub in each month over a continuous period of 12 months.
- (4) Condition C is that the event is not—
  - (a) connected to the personal circumstances of the tied pub tenant,
  - (b) a significant increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant,
  - (c) an extrinsic increase in the price at which a product or service which is subject to a product or service tie is supplied to the tied pub tenant,
  - (d) an event of a kind described in paragraph 6G(1)(c), or
  - (e) an event which the tied pub tenant could reasonably have prevented, or the effects of which it could reasonably have substantially mitigated.
- (5) Condition D is that the event—
  - (a) affects other pubs in the local area, but
  - (b) is unlikely to affect all pubs in Scotland.



## **THIS IS NOT THE MARSHALLED LIST**

- (6) Condition E is that the event—
  - (a) is directly related to a change in the tie imposed by the pub-owning business on the tied pub, or
  - (b) has an effect which is directly related to changes in the local area such as—
    - (i) changes to the local infrastructure,
    - (ii) changes to local employment,
    - (iii) long-term changes to the local economic environment,
    - (iv) changes to local environmental factors.
- (7) An “extrinsic increase” in relation to a tied product or service means an increase in the price of the product or service due to circumstances beyond the control of the pub-owning business such as—
  - (a) an increase in the price at which the pub-owning business purchases the product or service,
  - (b) an increase in any tax or duty payable by the pub-owning business which arises from the pub-owning business's purchase of the product or service, or
  - (c) an increase in any other tax or regulatory cost payable by the pub-owning business which affects the costs of the pub-owning business.

### *The investment exception*

- 6I (1) The investment exception applies where—
- (a) a pub-owning business has made a qualifying investment,
  - (b) the pub-owning business and the tied pub tenant have entered into an investment agreement in relation to the qualifying investment, and
  - (c) the investment period has not ended.
- (2) A “qualifying investment” is an investment in the premises of a tied pub—
- (a) which is made in connection with a project which, when the investment agreement is signed, would be reasonably expected to—
    - (i) change the trading environment, the nature or the capacity of the premises, and
    - (ii) increase the trade and profit of the tied pub,which is not made in pursuance of any duty under the terms of the tenancy under which the tied pub is occupied, and
  - (b) the amount of which is equal to or greater than—
    - (i) where the tenant was in occupation of the tied pub throughout the last complete financial year preceding the date on which the investment agreement was signed, twice the rent payable under the tenancy in respect of that period,
    - (ii) where paragraph (i) does not apply but the tenant was in occupation of the tied pub throughout the period of 12 months preceding the date on which the investment agreement was signed, twice the rent payable under the tenancy in respect of that period,

## **THIS IS NOT THE MARSHALLED LIST**

- (iii) otherwise, twice the rent payable under the tenancy in respect of the period of 12 months beginning with the date on which the tenancy first confers on the tied pub tenant the right to occupy the tied pub.
- (3) An “investment agreement” is a written agreement between the tied pub tenant and the pub-owning business which includes—
  - (a) a description of the proposed investment which demonstrates that it is a qualifying investment,
  - (b) a term specifying any proposed change to the terms of the tenancy,
  - (c) a list of the works to be carried out in the premises as a result of the investment which includes—
    - (i) the dates on which those works are to be completed,
    - (ii) the estimated costs of the works, and
    - (iii) confirmation that the tied pub tenant has had an opportunity to obtain alternative estimates for the works,
  - (d) a term specifying the dates on which the investment period is to begin and end,
  - (e) a term specifying—
    - (i) that at least one rent review will be conducted during the investment period, and
    - (ii) the date of that review, and
  - (f) confirmation that the tied pub tenant has obtained independent professional advice in relation to the agreement.
- (4) Before the investment agreement is signed by the pub-owning business and the tied pub tenant, the pub-owning business must provide to the tenant information which, in the pub-owning business's opinion, is necessary to demonstrate to the tenant how the investment would be reasonably expected to achieve the outcomes described in paragraph (2)(a)(i) and (ii), such as a reasonable forecast profit and loss statement for the tied pub for a period of 2 years.
- (5) For the purposes of paragraph (1) the investment agreement—
  - (a) is of no effect unless the pub-owning business complies with paragraph (4), and
  - (b) ceases to have effect if the works mentioned in paragraph (3)(c) are not completed—
    - (i) within the period of 12 months beginning with the day on which the investment agreement is signed by the pub-owning business and the tied pub tenant, or
    - (ii) if later, by the date agreed by the parties in the investment agreement.
- (6) But sub-paragraph (5)(b) does not apply where, after the investment agreement has been signed by both parties—
  - (a) an event occurs which is beyond the reasonable control of the pub-owning business,
  - (b) the event is likely to delay the date on which the works are completed,

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- (c) the pub-owning business notifies the tenant, in writing, within the period of 14 days beginning with the day on which the event occurs, of a new date by which the works are to be completed, and
  - (d) that new date is reasonable, given the nature of the event.
- (7) In that case, the investment agreement ceases to have effect if the works mentioned in sub-paragraph (3)(c) are not completed by the new date mentioned in sub-paragraph (6)(c).
- (8) For the purposes of sub-paragraphs (5)(b) and (6), the works are completed when the pub-owning business provides the tenant with a practical completion notice.
- (9) Where a tied pub tenant considers that the investment agreement is of no effect for the purposes of sub-paragraph (1) because the pub-owning business has not complied with sub-paragraph (4), the tenant may refer the matter to the Land Tribunal for Scotland,
- (10) Where a tied pub tenant considers that the investment agreement has ceased to have effect for the purposes of sub-paragraph (1)—
  - (a) because the works specified in that agreement are not completed within the period, or on the date, specified in sub-paragraph (5)(b) or (6)(c), or
  - (b) because the new date mentioned in that paragraph is not reasonable,
  - (c) the tenant may refer the matter to the Lands Tribunal for Scotland.
- (11) Where a tied pub tenant and a pub-owning business have entered into an agreement but disagree as to whether it is an investment agreement, either of them may refer the matter to the Lands Tribunal for Scotland.
- (12) The “investment period” is the period which—
  - (a) begins with the day on which the investment agreement is signed by the pub-owning business and the tied pub tenant, and
  - (b) ends with a date agreed between the tenant and the pub-owning business, being a date—
    - (i) which is reasonable in the light of the value of the qualifying investment,
    - (ii) which is no later than 7 years from the day on which the investment agreement is signed.
- (13) For the purposes of paragraph (4)(a) a “reasonable forecast” is a forecast which is based on an assessment of the level of trading at the tied pub after the investment if it were operated by a reasonably efficient tenant.>

### **Scottish Pubs Code Adjudicator and Scottish Ministers’ duty to seek to make code and appoint adjudicator**

#### **Richard Lyle**

- 85** In section 2, page 1, line 11, leave out <is established> and insert <may be established by the Scottish Ministers by regulations>

#### **Rachael Hamilton**

- 86** Leave out section 2

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### **Rachael Hamilton**

87 In schedule 2, page 14, line 7, leave out paragraph 1

### **Rachael Hamilton**

88 In schedule 2, page 14, line 10, leave out paragraph 2

### **Rachael Hamilton**

89 In schedule 2, page 14, line 16, leave out paragraph 3

### **Rachael Hamilton**

90 In schedule 2, page 14, line 30, leave out paragraph 4

### **Graham Simpson**

91 In schedule 2, page 15, leave out line 3

### **Michelle Ballantyne**

92 In schedule 2, page 15, line 3, at end insert—

<( ) where it is necessary to exercise the adjudicator's other functions.>

### **Rachael Hamilton**

93 In schedule 2, page 15, line 7, leave out <verbally> and insert <in writing>

### **Graham Simpson**

94 In schedule 2, page 15, line 10, after <specifying> insert <with sufficient particulars for the recipient to understand what is required>

### **Michelle Ballantyne**

95 In schedule 2, page 15, line 14, after <Chapter> insert < and setting out the right of appeal against such a requirement>

### **Rachael Hamilton**

96 In schedule 2, page 15, line 22, after <must> insert <—

(a) ensure the place is as reasonably convenient as possible to the individual, and

(b)>

### **Graham Simpson**

97 In schedule 2, page 15, line 24, at end insert—

<( ) A person required to provide information under this paragraph may appeal to the Court of Session against that requirement.>

### **Rachael Hamilton**

98 In schedule 2, page 15, line 26, leave out paragraph 5

### **Graham Simpson**

99 In schedule 2, page 15, line 35, after <exceed> insert—

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<(a) 1% of the pub-owning business's turnover in Scotland in the previous tax year,  
or>

**Richard Lyle**

**99A** As an amendment to amendment 99, line 2, leave out <1%> and insert <0.1%>

**Rachael Hamilton**

**100** In schedule 2, page 16, line 2, leave out paragraph 6

**Rachael Hamilton**

**103** In schedule 2, page 16, line 10, leave out paragraph 7

**Jeremy Balfour**

**101** In schedule 2, page 16, line 10, after <adjudicator> insert <and the adjudicator's staff>

**Alexander Stewart**

**102** In schedule 2, page 16, line 10, after <advice> insert <verbally or in writing>

**Rachael Hamilton**

**104** In schedule 2, page 16, line 12, leave out paragraph 8

**Rachael Hamilton**

**105** In schedule 2, page 16, line 24, leave out paragraph 9

**Graham Simpson**

**106** In schedule 2, page 16, line 27, at end insert—  
<where it is reasonable and in the public interest to do so.>

**Rachael Hamilton**

**107** In schedule 2, page 17, line 6, leave out paragraph 10

**Rachael Hamilton**

**108** In schedule 2, page 17, line 9, at end insert—  
<( ) Before making a loan under this paragraph, the Scottish Ministers must have regard to the reasons for the loan and whether it represents best value.  
( ) Where the Scottish Ministers give any loan to the adjudicator, they must publish—  
(a) the amount  
(b) any conditions attached, and  
(c) their reasons for giving the loan.>

**Rachael Hamilton**

**109** In schedule 2, page 17, line 11, leave out paragraph 11

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### **Michelle Ballantyne**

110 In schedule 2, page 17, line 12, at end insert—

<Premises

Where premises are provided, the Scottish Ministers are required to ensure that—

- (a) any such premises are suitable to the requirements of the adjudicator,
- (b) for any other purpose under the code, and
- (c) that the terms of any such arrangements represent best value.>

### **Rachael Hamilton**

111 In schedule 2, page 17, line 16, leave out paragraph 12

### **Rachael Hamilton**

112 In schedule 2, page 17, line 21, leave out paragraph 13

### **Alexander Stewart**

113 In schedule 2, page 17, line 22, leave out <adjudicator> and insert <Scottish Ministers>

### **Richard Lyle**

114 In schedule 2, page 17, line 22, at end insert <, subject to the requirements in this paragraph.

- ( ) The adjudicator must ensure in setting the levy that no person is to be charged a sum exceeding the levy charged per pub in England and Wales.>

### **Maurice Golden**

115 In schedule 2, page 17, line 22, after <adjudicator> insert <, subject to the requirements of this paragraph.

- (1A) The adjudicator must ensure in setting the levy that no person is to be charged a sum exceeding £300 in respect of each pub which the person owns or has owned.
- (1B) The Scottish Ministers may by regulations increase the sum specified in sub-paragraph (1A) to take into account any increase in the retail prices index.>

### **Alexander Stewart**

116 In schedule 2, page 17, line 23, leave out <adjudicator> and insert <Scottish Ministers>

### **Alexander Stewart**

117 In schedule 2, page 17, line 27, leave out <adjudicator> and insert <Scottish Ministers>

### **Alexander Stewart**

118 In schedule 2, page 17, line 29, leave out <adjudicator> and insert <Scottish Ministers>

### **Alexander Stewart**

119 In schedule 2, page 17, line 33, leave out <adjudicator> and insert <Scottish Ministers>

### **Rachael Hamilton**

120 In schedule 2, page 18, line 7, leave out paragraph 14

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**Rachael Hamilton**

- 121 In schedule 2, page 18, line 20, leave out paragraph 15

**Jamie Hepburn**

- 9 In schedule 2, page 18, line 24, at end insert—

<Appeals

A person on whom a levy is imposed under paragraph 12 may appeal to the sheriff against—

- (a) the imposition of the levy,
- (b) the amount of the levy.>

**Rachael Hamilton**

- 122 In schedule 2, page 18, line 28, leave out paragraph 16

**Graham Simpson**

- 123 In schedule 2, page 18, line 30, at end insert <including any expenditure incurred by the adjudicator,>

**Graham Simpson**

- 124 In schedule 2, page 18, line 30, at end insert—

<( ) where the expenditure of the adjudicator differs from that which was expected, account for that difference,>

**Rachael Hamilton**

- 125 In schedule 2, page 18, line 35, leave out paragraph 17

**Graham Simpson**

- 126 In schedule 2, page 19, leave out lines 10 and 11

**Michelle Ballantyne**

- 127 In schedule 2, page 19, line 11, at end insert—

- <( ) any other work undertaken by the adjudicator in performance of their functions,
- ( ) any steps that the adjudicator considers should be taken to improve the performance of its functions,
- ( ) the number of complaints that fell short of arbitration received by tied-pub tenants and the outcome of those complaints,
- ( ) the number of tied leases and tied tenants subject to the code,
- ( ) whether the reasons for the introduction of the code should continue to apply,>

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**Rachael Hamilton**

**129** In schedule 2, page 19, line 16, leave out paragraph 18

**Graham Simpson**

**128** In schedule 2, page 19, line 16, after <they> insert <reasonably>

**Rachael Hamilton**

**131** In schedule 2, page 19, line 21, leave out paragraph 19

**Rachael Hamilton**

**130** In schedule 2, page 19, line 21, at end insert—

<( ) The appointed adjudicator must—

- (a) be a resident of Scotland,
- (b) not be a member of the Scottish Parliament,
- (c) have at least 15 years of relevant experience of tied-pubs in Scotland,
- (d) be a fit and proper person to hold the appointment,
- (e) in accepting the appointment, devote their entire time and attention to the appointment,
- (f) take no other appointments or employment, paid or unpaid, that would give rise to any conflict of interest or would otherwise bring the office of the adjudicator into disrepute

**Richard Lyle**

**130A** As an amendment to amendment 130, line 4, at end insert—

- <( ) not be a member of the House of Commons,
- ( ) not be a member of the European Parliament,
- ( ) not be a councillor of a Scottish local authority,>

**Richard Lyle**

**130B** As an amendment to amendment 130, line 5, leave out <15> and insert <10>

**Rachael Hamilton**

**132** In schedule 2, page 19, line 30, leave out paragraph 20

**Rachael Hamilton**

**133** In schedule 2, page 20, line 15, leave out paragraph 21

**Rachael Hamilton**

**134** In schedule 2, page 20, line 35, leave out paragraph 22

**Jeremy Balfour**

**135** In schedule 2, page 20, line 37, at beginning insert <reasonable>



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### **Graham Simpson**

- 136 In schedule 2, page 20, line 38, after <including> insert <reasonable>

### **Rachael Hamilton**

- 137 In schedule 2, page 21, line 2, leave out paragraph 23

### **Michelle Ballantyne**

- 138 In schedule 2, page 21, line 3, at end insert—  
<( ) The Scottish Ministers must publish details of the remuneration on appointment of the adjudicator and at least annually thereafter.>

### **Rachael Hamilton**

- 139 In schedule 2, page 21, line 7, leave out paragraph 24

### **Graham Simpson**

- 140 In schedule 2, page 21, line 8, after <staff> insert <on such terms as are reasonably required for the performance of the adjudicator's functions and having regard to the impact such secondments may have on the other functions of the Scottish Ministers.  
( ) For the purposes of sub-paragraph (1), any such arrangements should be proportionate to the activities of the adjudicator and the relatively small number of tied pubs in Scotland as a proportion of the total pub sector.>

### **Rachael Hamilton**

- 141 In schedule 2, page 21, line 17, at end insert—  
<( ) In making arrangements for person to be seconded to the adjudicator, the adjudicator must not discriminate on the basis of race, ethnicity, religion, gender, gender identity or expression, age, national origin, disability or sexual orientation.>

### **Rachael Hamilton**

- 142\* In section 3, page 1, line 14, leave out subsections (1) and (2)

### **Jamie Hepburn**

- 10 In section 3, page 1, line 14, after <must> insert <use their best endeavours to>

### **Jamie Hepburn**

- 11 In section 3, page 1, line 16, after <must> insert <use its best endeavours to>

### **Graham Simpson**

- 143 In section 3, page 1, leave out lines 23 and 24

### **Richard Lyle**

- 144 In section 3, page 1, line 24, at end insert <, recognising the freedom of contract afforded to the parties and the requirement to maintain a route to market for pub-owning businesses who are brewers.>

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**Michelle Ballantyne**

- 145 In section 3, page 1, line 24, at end insert—  
<( ) the principle that tied pubs and pub-owning businesses should be free to contract on such terms as they think fit.>

**Maurice Golden**

- 146 In section 4, page 2, line 2, leave out subsections (1) and (2)

**Neil Bibby**

- 1 In section 4, page 2, line 2, leave out <1 year> and insert <2 years>

**Graham Simpson**

- 148 In section 4, page 2, line 2, leave out <1 year> and insert <3 years>

**Maurice Golden**

- 149 In section 4, page 2, line 2, leave out <1 year> and insert <4 years>

**Rachael Hamilton**

- 150 In section 4, page 2, line 2, leave out <1 year> and insert <5 years>

**Richard Lyle**

- 151 In section 4, page 2, line 2, leave out <1 year> and insert <6 years>

**Rachael Hamilton**

- 152 In section 4, page 2, leave out lines 6 to 8

**Graham Simpson**

- 153\* In section 4, page 2, line 7, leave out subsections (2) and (3)

**Maurice Golden**

- 154 In section 4, page 2, line 8, at end insert—  
<( ) Before the end of the period of 1 year beginning with the day that this section comes into force, the Scottish Ministers must appoint a person to the office of Scottish Pubs Code Adjudicator.>

**Graham Simpson**

- 155 In section 4, page 2, line 8, at end insert—  
<( ) Before making an appointment under subsection (1)(b), the Scottish Ministers must consult—  
(a) pub-owning businesses,  
(b) such other persons as they consider appropriate,  
as to the necessary skills required for the role of Scottish Pubs Code Adjudicator.>

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### **Maurice Golden**

- 156 In section 4, page 2, line 9, leave out from second <the> to <(1)(a)> in line 10 and insert <a draft Scottish statutory instrument containing regulations under section 1>

### **Graham Simpson**

- 157 In section 4, page 2, leave out line 13

### **Rachael Hamilton**

- 158\* In section 4, page 2, leave out line 14

### **Richard Lyle**

- 159 In section 5, page 2, line 17, leave out <each review period the Scottish Ministers must> and insert <the first review period, the Scottish Ministers must—

(a) prepare a report reviewing, over the period—

(i) the operation of the existing code of practice, and

(ii) whether it is necessary for sections 1, 2, 6, Part 2 and the schedules to be brought into force or, as the case may be, continue in force,

(b) make the report publicly available, and

(c) lay a copy of the report before the Scottish Parliament.

(1A) In the event that the Scottish Ministers consider that an existing code of practice could be modified to reflect the principles set out in section 3 more fully they may, by regulations, make changes to the existing code of practice.

(1B) In the event that the Scottish Ministers consider that it is necessary to bring into force any of sections 1, 2 and 6, Part 2 and the schedules then they may do so by regulations.

(1C) If, following the first review period, the Scottish Ministers have not brought into force any of sections 1, 2 and 6, Part 2 and the schedules—

(a) they must undertake reviews under this section for each subsequent review period, and

(b) the power to bring into force any of sections 1, 2 and 6, Part 2 and the schedules ceases to be exercisable if no regulations have been made within the period of 6 years beginning with the day of Royal Assent.

(1D) If the Scottish Ministers bring into force any of sections 1, 2 and 6, Part 2 and the schedules, they must for each review period following the first review period—>

### **Maurice Golden**

- 160 In section 5, page 2, line 19, leave out <the code> and insert <any code in operation>

### **Rachael Hamilton**

- 161 In section 5, page 2, leave out line 20

### **Rachael Hamilton**

- 162 In section 5, page 2, line 27, leave out subsection (3)

**THIS IS NOT THE MARSHALLED LIST**

**Rachael Hamilton**

- 163 In section 5, page 2, line 28, at end insert—  
<( ) must consider whether the adjudicator has the necessary resources to carry out their functions,>

**Neil Bibby**

- 2 In section 5, page 2, line 34, leave out <2> and insert <3>

**Maurice Golden**

- 164 In section 5, page 2, line 34, leave out <2> and insert <5>

**Richard Lyle**

- 165 In section 5, page 2, line 34, leave out <2> and insert <7>

**Maurice Golden**

- 166 In section 5, page 2, line 35, at end insert—  
<( ) in respect of the adjudicator—>

**Rachael Hamilton**

- 167 In section 5, page 2, line 36, leave out <section 2 comes into force> and insert <the Scottish Ministers appoint someone to the office of the adjudicator>

**Richard Lyle**

- 168 In section 5, page 2, line 36, leave out <section 2 comes> and insert <the first regulations under section 2 come>

**Neil Bibby**

- 3 In section 5, page 2, line 37, leave out <1 year> and insert <2 years>

**Graham Simpson**

- 169 In section 5, page 4, line 37, leave out <1 year> and insert <3 years>

**Maurice Golden**

- 170 In section 5, page 2, line 37, leave out <1 year> and insert <4 years>

**Richard Lyle**

- 171 In section 5, page 2, line 37, leave out <1 year> and insert <6 years>

**Maurice Golden**

- 172 In section 5, page 2, line 37, at end insert—  
<( ) in respect of the operation of the code—  
(i) begins on the day after the code comes into operation, and  
(ii) ends on 31 March in the calendar year falling 1 year after it came into operation.>

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**Rachael Hamilton**

173 Leave out section 6

**Rachael Hamilton**

178 Leave out section 8

**Rachael Hamilton**

185 Leave out section 9

**Rachael Hamilton**

196 Leave out section 10

**Rachael Hamilton**

200 Leave out section 11

**Rachael Hamilton**

213 Leave out section 12

**Rachael Hamilton**

216 Leave out section 13

**Rachael Hamilton**

224 Leave out section 14

**Rachael Hamilton**

229 Leave out section 15

**Rachael Hamilton**

234 Leave out section 16

**Rachael Hamilton**

247 Leave out section 17

**Rachael Hamilton**

250 Leave out section 18

**Rachael Hamilton**

259 Leave out section 19

### **Unenforceability of contract terms**

**Michelle Ballantyne**

174 In section 7, page 3, line 11, leave out <unenforceable> and insert <void>

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### **Maurice Golden**

- 175 Leave out section 7

### **Investigation by the adjudicator**

#### **Graham Simpson**

- 176 In section 8, page 3, line 17, after <code> insert <and it is in the public interest to do so>

#### **Rachael Hamilton**

- 177 In section 8, page 3, line 19, at end insert—  
<( ) Where the adjudicator decides to investigate, a pub-owning business may appeal to the Sheriff Appeal Court against the decision to investigate.>

#### **Alexander Stewart**

- 179 In section 9, page 3, line 22, after <failed> insert <, without proper excuse,>

#### **Alexander Stewart**

- 180\* In section 9, page 3, line 22, after <may> insert <, but is under no obligation to do so if satisfied that it would not be in the public interest to do so,>

#### **Michelle Ballantyne**

- 181 In section 9, page 3, line 24, at end insert—  
<( ) making recommendations to the business to do, or stop doing, something to comply with the code,>

#### **Jeremy Balfour**

- 182 In section 9, page 3, line 25, leave out <directing> and insert <making recommendations to>

#### **Graham Simpson**

- 183 In section 9, page 3, line 29, at end insert—  
<( ) Where enforcement actions are specified in a direction under subsection (2)(a) or (b), the direction must also state—  
(a) the extent of the failure to comply with the code,  
(b) the reason for making the direction, and  
(c) the period within which the direction must be complied with.>

#### **Michelle Ballantyne**

- 184 In section 9, page 3, line 31, at end insert—  
<( ) A person against whom enforcement action is taken may appeal to the Court of Session against the enforcement action.>

**THIS IS NOT THE MARSHALLED LIST**

**Graham Simpson**

186 In section 10, page 4, line 1, after first <the> insert <detailed>

**Graham Simpson**

187 In section 10, page 4, line 1, at end insert <and why it is in the public interest to do so>

**Rachael Hamilton**

188 In section 10, page 4, line 3, at end insert <, which must be no less than 56 days,>

**Graham Simpson**

189 In section 10, page 4, line 5, leave out <the permitted maximum> and insert <1% of the pub-owning business' turnover in Scotland in the previous tax year>

**Richard Lyle**

189A As an amendment to amendment 189, line 1, leave out <1%> and insert <0.1%>

**Richard Lyle**

191 In section 10, page 4, line 6, leave out subsections (3) and (4)

**Graham Simpson**

190 In section 10, page 4, line 6, leave out subsection (3)

**Graham Simpson**

192 In section 10, page 4, line 7, leave out subsection (4) and insert—

<( ) The Scottish Ministers may—

(a) by regulations increase the penalty under subsection (2), but

(b) only—

(i) once in each calendar year,

(ii) to reflect an increase in the retail price index.

( ) In this section “retail price index” means the general index for retail prices (for any items) published by the Office of National Statistics.>

**Richard Lyle**

193 In section 10, page 4, line 9, at end insert—

<( ) The Scottish Ministers may by regulations increase the penalty.

( ) The Scottish Ministers may only increase the penalty once in each calendar year to reflect an increase in the retail prices index.

( ) In this section, “retail prices index” means the general index for retail prices (for any items) published by the Office for National Statistics.>

**Graham Simpson**

194 In section 10, page 4, line 12, leave out subsection (6)

**THIS IS NOT THE MARSHALLED LIST**

**Neil Bibby**

- 12 In section 10, page 4, line 13, leave out <Sheriff Appeal Court> and insert <sheriff>

**Maurice Golden**

- 195 In section 10, page 4, line 13, leave out <Sheriff Appeal Court> and insert <Court of Session>

**Graham Simpson**

- 197 After section 10, insert—

**<Appeals against enforcement action**

- (1) A person against whom enforcement action is taken under section 9 may appeal to the Court of Session on the following grounds—
  - (a) there has not been a failure to comply with the code,
  - (b) that the steps required by a direction exceed what is necessary to remedy any breach of the code,
  - (c) that the imposition of a financial penalty is not justified to remedy any breach of the code,
  - (d) that the amount of a financial penalty imposed is excessive, or
  - (e) that the time period allowed for compliance with a direction or payment of a financial penalty falls short of what should reasonably be allowed.
- (2) Where an appeal is lodged under subsection (1) then any direction or financial penalty is suspended until the appeal is determined.>

**Graham Simpson**

- 198 In section 11, page 4, line 26, at end insert—

- <( ) Where an appeal is lodged under section (*Appeals against enforcement action*)—
- (a) if the appeal finds that there has not been a failure to comply with the code then no report is to be published, and
  - (b) publication of any report which is required is to be suspended until the appeal is determined.>

**Graham Simpson**

- 199 In section 11, page 4, line 26, at end insert—

- <( ) A pub-owning business may appeal to the Court of Session against the decision to name the pub-owning business in the report.>

**Alexander Stewart**

- 202 In section 12, page 4, line 29, after first <the> insert <reasonable>

**Michelle Ballantyne**

- 203 In section 12, page 4, line 30, after <failed> insert <without proper excuse>

**Graham Simpson**

- 204 In section 12, page 4, line 30, at end insert <, and



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- (b) the adjudicator takes enforcement action against the pub-owning business under section 9 in relation to that failure.

### Alexander Stewart

- 205 In section 12, page 4, line 31, after third <the> insert <reasonable>

### Michelle Ballantyne

- 206 In section 12, page 4, line 34, after <was> insert <frivolous,>

### Jeremy Balfour

- 207 In section 12, page 4, line 34, leave out <wholly>

### Graham Simpson

- 208 In section 12, page 5, line 5, after first <the> insert <detailed>

### Graham Simpson

- 209 In section 12, page 5, line 5, after <so> insert <and why it is in the public interest to do so,>

### Rachael Hamilton

- 210 In section 12, page 5, line 7, at end insert <, which must be no less than 56 days,>

### Neil Bibby

- 13 In section 12, page 5, line 14, leave out <Sheriff Appeal Court> and insert <sheriff>

### Maurice Golden

- 211 In section 12, page 5, line 14, leave out <Sheriff Appeal Court> and insert <Court of Session>

### Graham Simpson

- 212 In section 12, page 5, line 16, at end insert—

<( ) Where the adjudicator imposes a requirement under subsection (1) then notice of the requirement must be served on the pub-owning business at the same time as notice of enforcement action is served on the pub-owning business in terms of section 9 or 10 as appropriate.

( ) Where—

- (a) the adjudicator imposes a requirement under subsection (1) on a pub-owning business, and
- (b) the pub-owning business appeals under section 10A against enforcement action taken in relation to the same failure to comply with the code as the subject of the requirement under subsection (1)

the requirement imposed under subsection (1) is suspended until the appeal lodged in terms of section (*Appeals against enforcement action*) is determined.>

### Neil Bibby

- 4 In section 13, page 5, line 27, at end insert—

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- <( ) The adjudicator must, in drawing up the criteria mentioned in paragraphs (a), (c) and (d) of subsection (1), have regard to the impact the behaviour of tied-pub tenants may have on compliance with the code by pub-owning businesses.>

### Neil Bibby

- 214 In section 13, page 5, line 27, at end insert—

- <( ) The criteria mentioned in subsection (1)(a) must include time limits, which may be set by reference to the suspected failure to comply with the code or otherwise, after the expiry of which an investigation may not be initiated.>

### Rachael Hamilton

- 215 In section 13, page 5, line 31, after <must> insert <fully>

### Graham Simpson

- 218 In section 14, page 5, line 35, leave out <adjudicator> and insert <Lands Tribunal for Scotland>

### Graham Simpson

- 219 In section 14, page 6, line 3, leave out <adjudicator> and insert <Lands Tribunal for Scotland>

### Jeremy Balfour

- 220 In section 14, page 6, line 5, at end insert—

- <( ) Subsection (1) does not apply where the adjudicator is reasonably satisfied that—
- (a) the dispute is frivolous, vexatious or otherwise without merit, or
  - (b) to act as the arbitrator in the dispute, or to appoint another person to do so, would otherwise not be in the public interest.>

### Graham Simpson

- 221 In section 14, page 6, line 6, leave out first <adjudicator> and insert <Lands Tribunal for Scotland>

### Graham Simpson

- 222 In section 14, page 6, line 6, leave out second <adjudicator> and insert <Lands Tribunal for Scotland>

### Alexander Stewart

- 223 In section 14, page 6, line 11, at end insert—

- <( ) or such other rules as the Scottish Ministers may by regulations prescribe,>

### Michelle Ballantyne

- 217 In section 14, page 6, line 11, at end insert—

- <( ) The substance of any final award made by the adjudicator or a person appointed by the adjudicator shall be published within 28 days unless it is in the public interest not to do so and following appropriate anonymisation of the parties to the award.>

## THIS IS NOT THE MARSHALLED LIST

### Neil Bibby

- 225 In section 15, page 6, line 19, leave out subsections (2) and (3) and insert—
- <(1A) But a dispute may be submitted to arbitration under this section only if—
- (a) the tenant notified the business of the alleged failure to comply with the code that is the subject of the dispute within the period specified in subsection (1B), and
  - (b) the dispute is submitted within the period of 4 months beginning with the day falling 21 days after the business was notified.
- (1B) The period referred to in subsection (1A)(a) is the period of 6 months, beginning with—
- (a) the day on which the alleged failure to comply with the code occurred,
  - (b) where the alleged failure was a continuing one, the day on which the failure ceased, or
  - (c) the day on which the tenant became, or could reasonably be expected to have become, aware of the alleged failure, if later than the day mentioned in paragraph (a) or (as the case may be) (b).>

### Neil Bibby

- 226 In section 15, page 6, line 27, leave out <(2)(b)> and insert <(1A)(b) or the 6 month period mentioned in subsection (1B)>

### Neil Bibby

- 227 In section 15, page 6, line 29, after <4> insert <or (as the case may be) 6>

### Graham Simpson

- 228 In section 15, page 6, line 30, at end insert—
- <(5) Where a person submits a dispute for arbitration by the Lands Tribunal for Scotland, they must also give notice of the submission of that dispute to the adjudicator.>

### Graham Simpson

- 248 In section 18, page 7, line 26, leave out from <14(1)> to <an> in line 27 and insert <15(5), the adjudicator receives notification that an application has been made for>

### Jeremy Balfour

- 249 In section 18, page 7, line 29, at end insert <and
- ( ) any third party in possession of information relevant to the arbitration,>

### Fees and expenses payable

### Graham Simpson

- 230 In section 16, page 6, line 34, leave out first <adjudicator> and insert <Lands Tribunal for Scotland>

## THIS IS NOT THE MARSHALLED LIST

### **Graham Simpson**

- 231 In section 16, page 6, line 34, leave out second <adjudicator> and insert <Lands Tribunal for Scotland>

### **Graham Simpson**

- 232 In section 16, page 6, line 34, at end insert <provided that where a person is appointed by an adjudicator the fees and expenses of that person do not exceed the reasonable fees and expenses that would have been incurred had the adjudicator acted as arbitrator>

### **Michelle Ballantyne**

- 233 In section 16, page 6, line 39, after <vexatious> insert <frivolous or otherwise without merit>

### **Jamie Hepburn**

- 14 In section 16, page 6, line 39, at end insert—
- <( ) The adjudicator may, on the request of the pub-owning business and having regard to the circumstances of the arbitration and the dispute submitted to it—
    - (a) relieve the business in whole or in part of the liability under subsection (1),
    - (b) determine that a tied-pub tenant who is a party to the arbitration is instead liable to pay so much of the arbitrator's reasonable fees and expenses as the adjudicator considers appropriate.>

### **Graham Simpson**

- 235 In section 17, page 7, line 1, leave out <adjudicator> and insert <Lands Tribunal for Scotland>

### **Graham Simpson**

- 236 In section 17, page 7, line 5, leave out <adjudicator> and insert <Lands Tribunal for Scotland>

### **Graham Simpson**

- 237 In section 17, page 7, line 13, leave out <adjudicator> and insert <Lands Tribunal for Scotland>

### **Graham Simpson**

- 238 In section 17, page 7, line 14, after <applies> insert <having regard to the financial means of the tied-pub tenant and the conduct by the tied-pub tenant to the arbitration>

### **Graham Simpson**

- 239 In section 17, page 7, line 15, leave out <adjudicator> and insert <Lands Tribunal for Scotland>

### **Graham Simpson**

- 240 In section 17, page 7, line 16, leave out <adjudicator> and insert <Lands Tribunal for Scotland>

### **Richard Lyle**

- 241 In section 17, page 7, line 20, after <amount> insert <(which must not exceed the maximum arbitration costs under the Pubs Independent Rent Review Scheme (PIRRS))>

### **Rachael Hamilton**

- 242 In section 17, page 7, line 20, after <pay> insert <, the whole or part of,>

## THIS IS NOT THE MARSHALLED LIST

### **Maurice Golden**

- 243 In section 17, page 7, leave out lines 23 and 24

### **Rachael Hamilton**

- 244 In section 17, page 7, line 23, after <payment> insert <, wholly or partially,>

### **Jeremy Balfour**

- 245 In section 17, page 7, line 24, at end insert—

- <( ) Regulations under subsection (4) containing provision described in paragraph (b) of subsection (6) may not—
- (a) specify an amount in excess of £20,000,
  - (b) set out a methodology that could result in an amount in excess of £20,000 being determined.>

### **Rachael Hamilton**

- 246 In section 17, page 7, line 24, at end insert—

- <( ) The Scottish Ministers may by regulations allow the adjudicator, or a person appointed by the adjudicator should they determine that a representative of a tied-pub tenant has submitted or conducted a dispute to arbitration under this section in a way which is frivolous, vexatious or wholly without merit, to—
- (a) apply the fee to be paid under this section to be paid by the representative, and
  - (b) give no less than 14 days written notice to the representative to explain why they are not liable to pay the fee.>

## **Reports on avoidance**

### **Michelle Ballantyne**

- 251 In section 19, page 7, line 37, leave out <avoidance activity> and insert <business practices which are, in the adjudicator's opinion, unfair business practices>

### **Michelle Ballantyne**

- 252 In section 19, page 8, line 1, leave out <avoidance activity> and insert <unfair business practices>

### **Michelle Ballantyne**

- 253 In section 19, page 8, line 1, leave out from <acts> to end of line 3 and insert <a business practice which is>

### **Michelle Ballantyne**

- 254 In section 19, page 8, line 4, leave out <the business> and insert <a pub-owning business at any time after this Act comes into force>

### **Michelle Ballantyne**

- 255 In section 19, page 8, line 4, leave out <a tied-pub tenant> and insert <tied-pub tenants>

## THIS IS NOT THE MARSHALLED LIST

### **Graham Simpson**

- 256 In section 19, page 8, line 5, at end insert—  
<( ) For the purposes of subsection (2)(a), acts or omissions are held not to be avoidance activity if they do not constitute an unfair business practice in England and Wales.>

### **Rachael Hamilton**

- 257 In section 19, page 8, line 7, leave out <activity> and insert <business practices>

### **Alexander Stewart**

- 258 In section 19, page 8, line 14, leave out <reasons> and insert <reasoning>

## **Interpretation**

### **Maurice Golden**

- 260 In section 20, page 8, line 18, leave out <is being leased to a tenant who> and insert <has been leased to a tenant for a period of more than one year and where the tenant>

### **Richard Lyle**

- 260A As an amendment to amendment 260, line 2, leave out <one year> and insert <two years>

### **Maurice Golden**

- 261 In section 20, page 8, line 19, after <obligation> insert <entered into after the day of Royal Assent>

### **Rachael Hamilton**

- 262 In section 20, page 8, line 19, after <obligation> insert <, entered into after section 1 comes into force,>

### **Rachael Hamilton**

- 263 In section 20, page 8, line 20, leave out <some or all> and insert <50% of the total>

### **Richard Lyle**

- 264 In section 20, page 8, line 20, leave out <some or all of the alcohol> and insert <over 75% of beer>

### **Jeremy Balfour**

- 265 In section 20, page 8, line 20, leave out <in the pub> and insert <at the premises>

### **Michelle Ballantyne**

- 266 In section 20, page 8, line 21, leave out <of the pub> and insert <, or a person who is a group undertaking in relation to the landlord>

### **Graham Simpson**

- 267 In section 20, page 8, line 22, after <landlord> insert <or a person who is a group undertaking (within the meaning of section 1161 of the Companies Act 2006) in relation to the landlord>

## THIS IS NOT THE MARSHALLED LIST

### **Graham Simpson**

268 In section 20, page 8, line 23, at end insert—

<( ) The Scottish Minsters may by regulations exclude certain types of landlord, tied-pub tenant and leases from the provisions of the code.>

### **Rachael Hamilton**

269 In section 20, page 8, line 26, at end insert <or a third-party representative of the landlord,>

### **Michelle Ballantyne**

270 In section 20, page 8, leave out line 29 to 31 and insert <does not require the tenant to procure the beer or cider from a particular supplier.>

### **Jeremy Balfour**

271 In section 20, page 8, line 32, leave out subsection (3)

### **Jeremy Balfour**

272 In section 21, page 8, line 36, at end insert <where that landlord is the landlord of at least 10 pubs in Scotland.>

### **Alexander Stewart**

272A As an amendment to amendment 272, line 1, leave out <10> and insert <20>

### **Rachael Hamilton**

272B As an amendment to amendment 272, line 1, leave out <10> and insert <25>

### **Graham Simpson**

272C As an amendment to amendment 272, line 1, leave out <10> and insert <30>

### **Maurice Golden**

272D As an amendment to amendment 272, line 1, leave out <10> and insert <50>

### **Michelle Ballantyne**

273 In section 21, page 8, line 37, leave out subsection (2)

### **Graham Simpson**

274 In section 21, page 9, line 1, leave out <include a person who has been> and insert <is a person who is currently>

### **Rachael Hamilton**

275 In section 22, page 9, leave out line 5

### **Rachael Hamilton**

276 In section 22, page 9, line 14, after <on> insert <the premises>

### **Alexander Stewart**

277 In section 22, page 9, line 14, after third <the> insert <retail>

## THIS IS NOT THE MARSHALLED LIST

### Regulation-making powers

**Michelle Ballantyne**

278\* Leave out section 23

**Maurice Golden**

279 In section 24, page 9, line 28, after <1,> insert <paragraph 13(1B) of schedule 2 and sections>

**Maurice Golden**

280 In section 24, page 9, line 28, at end insert—

<(2A) Before laying draft regulations under section 1 before the Scottish Parliament for approval, the Scottish Ministers must consult bodies which are representative of the tied pubs sector.

(2B) When laying draft regulations under section 1 before the Scottish Parliament for approval, the Scottish Ministers must also lay before the Parliament—

(a) a statement setting out the reasons they consider it to be necessary for the benefit of the tied pub sector and of the consumer that the draft regulations be made,

(b) an explanatory document setting out—

(i) details of the consultation undertaken under subsection (2A),

(ii) any representations received as a result of the consultation,

(iii) what account was taken of the representations, and

(iv) details of the evidence the Scottish Ministers consider justifies their conclusion that the code is necessary for the benefit of the tied pubs sector and the consumer.>

**Michelle Ballantyne**

281\* In section 24, page 9, line 29, leave out subsection (3)

### Commencement

**Richard Lyle**

282 In section 25, page 9, line 35, after <3> insert <(other than subsection (2))>

**Graham Simpson**

283 In section 25, page 10, line 3, at end insert—

<( ) Before making regulations under subsection (2), the Scottish Ministers must prepare, and lay before the Parliament an assessment of the—

(a) economic impact of the Bill,

(b) impact of the Bill on Article 1 of the First Protocol to the European Convention on Human Rights.>



## THIS IS NOT THE MARSHALLED LIST

### **Expiry of Act**

#### **Maurice Golden**

**284** After section 25, insert—

#### **<Expiry**

- (1) This Act expires at the end of the period of three years beginning with the date on which it is passed.
- (2) The Scottish Ministers may by regulations make transitional, transitory or saving provision in connection with the expiry of any provision of this Act.>

#### **Graham Simpson**

**284A** As an amendment to amendment 284, line 3, leave out <three> and insert <five>

#### **Richard Lyle**

**284B** As an amendment to amendment 284, line 3, leave out <three> and insert <eight>

#### **Rachael Hamilton**

**285** After section 25, insert—

#### **<Expiry of this Act**

- (1) This Act expires after the end of the period of 7 years beginning with the day of Royal Assent.
- (2) The Scottish Ministers may by regulations make transitional, transitory or saving provision they consider appropriate for the purpose of, or in connection with, the expiry of this Act.>



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