



OFFICIAL REPORT
AITHISG OIFIGEIL

Economy and Fair Work Committee

Wednesday 5 March 2025

Session 6



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CONTENTS

	Col.
SUBORDINATE LEGISLATION.....	1
Tied Pubs (Miscellaneous Amendment) (Scotland) Regulations 2025 [draft]	1

ECONOMY AND FAIR WORK COMMITTEE

8th Meeting 2025, Session 6

CONVENER

*Colin Smyth (South Scotland) (Lab)

DEPUTY CONVENER

*Michelle Thomson (Falkirk East) (SNP)

COMMITTEE MEMBERS

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)
*Murdo Fraser (Mid Scotland and Fife) (Con)
*Jamie Halcro Johnston (Highlands and Islands) (Con)
*Daniel Johnson (Edinburgh Southern) (Lab)
*Gordon MacDonald (Edinburgh Pentlands) (SNP)
*Lorna Slater (Lothian) (Green)
*Kevin Stewart (Aberdeen Central) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Tom Arthur (Minister for Employment and Investment)
Aileen Bearhop (Scottish Government)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Economy and Fair Work Committee

Wednesday 5 March 2025

[The Convener opened the meeting at 09:00]

Subordinate Legislation

Tied Pubs (Miscellaneous Amendment) (Scotland) Regulations 2025 [draft]

The Convener (Colin Smyth): Good morning, everyone, and welcome to the eighth meeting in 2025 of the Economy and Fair Work Committee. Our first item of business is a short evidence session on the draft Tied Pubs (Miscellaneous Amendment) (Scotland) Regulations 2025. I am pleased to welcome Tom Arthur, the Minister for Employment and Investment; Aileen Bearhop, the head of industry development in the Scottish Government; and Mairead McCrossan, a Government lawyer.

I invite the minister to make a short opening statement.

The Minister for Employment and Investment (Tom Arthur): Thank you, convener. I am grateful for the opportunity to introduce the regulations.

When I appeared before the committee in June last year, you were considering the Scottish Pubs Code Regulations 2024 and related Scottish statutory instruments. The Scottish pubs code will improve the position of tied pub tenants through the creation of a statutory framework to govern the relationship between pub-owning businesses and their tied pub tenants.

At the time of the committee session, I was aware of significant stakeholder concerns about the regulations and, in particular, the code. I was not able to withdraw the regulations in June, but I undertook to carry out a further focused and targeted consultation on the pubs code. My stated intention was to introduce an SSI to make amendments to the code and to bring the legislation into force as soon as possible. The SSI that the committee is considering today is the result of that further consultation.

My officials and I have engaged fully with stakeholders in the development of the legislation. The consultation process involved the receipt of written proposals from stakeholders, followed by workshops and a formal written consultation. The intention was not to reopen fundamental policy debates about the Tied Pubs (Scotland) Act 2021;

the focus has been on key areas of concern that were raised by tenants, pub-owning businesses and their representative organisations. I am grateful to stakeholders for their continued engagement in that work.

The policy area remains difficult, with stakeholders diametrically opposed on certain matters. A difficult balancing act is required, and it has not always been possible to reach consensus. However, the purpose of the code is to improve the position of tied pub tenants, and I believe that it will now achieve that purpose more effectively. The SSI will ensure that the code fulfils the intentions of the 2021 act and is consistent with its regulatory principles.

I am conscious of the significant challenges for all businesses at this time, so I have sought to ensure that we do not put unnecessary demands on pub-owning businesses while still improving the position of tied pub tenants. The SSI will result in some aspects of the code, including the guest beer arrangement and information provisions, coming into force on 31 March 2025. In response to concerns from some pub-owning businesses about their preparedness, the provisions on market-rent-only leases, rent assessment and review will come into force on 30 June.

Once in place, the code will be monitored and enforced by the Scottish pubs code adjudicator. The adjudicator and her office have been working hard to prepare for when the code comes into force, and I am pleased that that has involved good engagement with the sector. The 2021 act requires that the adjudicator's work and the code be reviewed after 31 March 2026, and every three years thereafter. We must continue to ensure that the code is proportionate and in keeping with the obligations of the act.

I am happy to take any questions that the committee might have.

The Convener: Thank you very much, minister. As you rightly said, the committee discussed quite a lot of the issues when you gave evidence in June last year, but some members have questions.

Murdo Fraser (Mid Scotland and Fife) (Con): Good morning, minister and officials. As you said, minister, the committee considered the matter last year. Stakeholders on both sides raised quite a number of concerns with us. It is fair to say that, as you characterised the position, there are some almost irreconcilable differences between the different parties. On the one side, there are the pub tenants and, on the other side, there are the large breweries that own the pubs, and it is sometimes very difficult to find any consensus between the two.

You said that there had been additional consultation. From that consultation, have you been able to reach any consensus on the way forward?

Tom Arthur: I would characterise the approach that I have taken as being about not making the perfect the enemy of the good. I am conscious that there is an obligation for the code to come into effect, given that the act received unanimous support in Parliament. The committee is well versed in the reasons for the significant delay in bringing forward the regulations. Consistent with the obligations to bring the code into force as soon as possible, through the process of consultation on the SSI, I have sought to introduce amendments that may not necessarily represent fully the desired objectives of either party but which represent an improvement on the previous position. As I said, it is about not making the perfect the enemy of the good.

Under the 2021 act, there is an obligation for a review to be conducted after 31 March next year, which is a five-year window. To conform with the act, there will be a review next year and, subsequently, there will be a review every three years. Through the review process, there will be an opportunity to consider how the code has impacted tenants and pub-owning businesses in its first year of operation, and whether further changes can be made to improve the position of tied pub tenants while still being consistent with the regulatory principles.

The focus has been on trying to identify a set of regulations that would at least be acceptable to each party, if not command the full-throated support of each party, and I hope that we have achieved that. This can be seen as the beginning rather than the end of the process. Through the review next year and the subsequent reviews, there will be an opportunity for further consideration, consultation and engagement to identify any further improvements that can be made.

Murdo Fraser: I appreciate that we have the review in a year, but the code is coming into effect on 31 March, which is only three weeks from now, so we are very much in the 11th hour in that regard.

A few concerns have been raised with us by the Scottish Beer & Pub Association, which, as you know, represents landlords. One of its concerns is about the number of pub companies and tenants who are unaware of the code, which is coming into effect in just a few weeks. The association says that both the Scottish Government and the Scottish pubs code adjudicator have not been able to identify all impacted businesses, and it is unlikely that that will be done before 31 March. What is the Scottish Government doing to address

the issue of people not being aware that the code is coming in?

Tom Arthur: First, the legislation was passed four years ago, and the original regulations were brought before the committee in the summer of last year. Therefore, this has been a live issue and there has been an opportunity for awareness to be raised. I know that the pubs code adjudicator has been working constructively with stakeholders to increase awareness.

Secondly, as minister, I will certainly be undertaking activities around the time that the code comes into force to raise awareness of the code—and the obligations under it—among pub-owning businesses, tenants and wider stakeholders.

Thirdly—this might be a point that you were intending to raise, Mr Fraser—stakeholders have raised the issue of enforcement during the early phases of the code coming into effect. That is a decision for the adjudicator, but I will ask the adjudicator to consider the matter, as well as responding to the concerns of pub-owning businesses.

On the slightly later commencement date, at the end of June, of the provisions regarding market-rent-only leases and rent assessment and review, the issue of implementation has been raised with me as a clear concern. I have sought to balance that concern with the obligation to bring the code into force, particularly given the already significant delays. I will ask the pubs code adjudicator, who has an important role to play in that process, to consider how enforcement is to be approached in the code's early period of operation, given that awareness-raising work still needs to be undertaken.

Murdo Fraser: Thank you for that. The second concern that the association has raised is that no information has been given about the code's total cost or the amounts to be levied against pub companies in order to pay for the adjudicator.

Tom Arthur: Aileen Bearhop can come in on the specific costs.

Aileen Bearhop (Scottish Government): The difficulty with the costs is that we do not know how many cases will be brought to the adjudicator. At the moment, the adjudicator is working on the sums for the next year and on how the levy will work. Some of the cost implications were set out in the business and regulatory impact assessments that we did. I do not have the exact figures but I can provide them if need be.

Fairly soon, pub companies will get some indication about what the levy might look like. The minister has to approve the idea of a levy before that happens.

Murdo Fraser: The adjudicator is currently funded by the Scottish Government, is that right?

Aileen Bearhop: Yes.

Murdo Fraser: Do you know how much it costs?

Aileen Bearhop: For the year, we have a budget of £200,000, but we are nowhere close to spending that.

Murdo Fraser: Thank you.

The third concern that the association has raised with us is the lack of statutory guidance on how the code will operate in practice. The association wanted a requirement for the guidance to be in place at least six months before the code's introduction and it is concerned about the guest beer provision in the regulations, which it says will be very difficult for pubcos to manage or monitor. No guidance on how the adjudicator will deal with that has been issued. When do you expect any such guidance to be issued?

Tom Arthur: Guidance would be a matter for the pubs code adjudicator, but I appreciate the specific point about the guest beer provision. Should the regulations be approved by the Parliament, I will write to the adjudicator to raise those specific concerns.

Murdo Fraser: Given that we are expecting the new rules to come in on 31 March, will guidance be in place before then?

Tom Arthur: The pubs code adjudicator is engaging closely with pub-owning businesses and tenants. I refer to my previous point about the question of how enforcement is approached in the early phases of the code coming into force. Although it is for the adjudicator to make the decision on guidance, I will, while respecting her position, write to convey the concerns that have been raised by stakeholders and by committee members on stakeholders' behalf.

Daniel Johnson (Edinburgh Southern) (Lab): I have a couple of broad questions. I ask the forgiveness of my committee colleagues who have been through the first iteration of regulations, because I am slightly late to the party.

The substance of the regulations is about the fairness principle—it is about the balance between the landlord and tenant. As you have been looking at how this will operate, what contexts have been taken into consideration, given that there can be a broad range of different arrangements in a commercial lease situation, including retail? When adjudicating on the basis of fairness, will the adjudicator be looking purely at the pub industry, or taking a broader range of contexts into consideration?

09:15

Tom Arthur: The regulatory principles that are set out in the 2021 act provide important context for the operation of the adjudicator. You have identified the principle that there should be a fair share of risks and rewards. Tenants should be no worse off than they would be if they were not subject to a product or service tie, and there is the need for the lawful treatment of tenants by pub-owning companies. The principles that are set out in the act and the pubs code create the context in which the adjudicator will operate.

On the broader context, as I touched on in my opening remarks, I am acutely aware of the challenges that all businesses—but particularly those in the hospitality sector—face at the moment. That certainly informed my decision regarding different commencement dates for different parts of the regulations, as well as my intention, subject to the regulations being agreed to by the Parliament, to write to the pubs code adjudicator on the specific points about guest beer, guidance and enforcement in the early period. I have taken into account the broader economic context and the challenges that the hospitality sector faces, as I referred to earlier.

Daniel Johnson: We are all aware of the current state of pubs in particular within the hospitality industry, and the decline in their number. I am sure that we are all aware of pubs that have closed in our constituencies and regions. Indeed, a tenant very close to me has just given up his lease in what one would imagine would be a very successful pub. In relation to the adjudicator's work within the overall framework for the legislation, will there be explicit consideration of the health of pubs, or will there just be consideration of the broader context?

Tom Arthur: As you identified, the adjudicator operates within the framework for the legislation, but they have autonomy and independence in how they take their decisions. The adjudicator engages closely with stakeholders that represent both pub-owning companies and tenants, so they will be well versed in the most relevant and pertinent issues.

In my role as the minister who is leading on the issue and has introduced the regulations, I have had substantive engagement with tenants, pub-owning businesses and their representatives. I am mindful of the obligations placed on ministers when introducing regulations under the 2021 act, as the clear policy intention is to strengthen the position of tenants, but I am cognisant of the challenges that the hospitality industry faces, and I want to ensure that Scotland remains an open, welcoming and positive environment for investment, including in hospitality and pub-owning businesses.

Daniel Johnson: Thank you.

The Convener: There are no more questions from members, so I move to agenda item 2, which is formal consideration of the motion to approve the instrument. I remind everyone that only committee members and the minister may take part in this agenda item.

I invite the minister to move the motion.

Motion moved,

That the Economy and Fair Work Committee recommends that the Tied Pubs (Miscellaneous Amendment) (Scotland) Regulations 2025 [draft] be approved.—[Tom Arthur]

Motion agreed to.

The Convener: A short report on the committee's decision will be prepared and published. I invite the committee to agree to delegate responsibility for that report to me, as convener. Are members happy with that?

Members *indicated agreement.*

The Convener: I thank the minister and his officials for joining us.

09:19

Meeting continued in private until 09:36.

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