



The Scottish Parliament
Pàrlamaid na h-Alba

Clerk to the Delegated Powers and Law Reform Committee
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Neil Bibby MSP
By email

11 March 2020

Tied Pubs (Scotland) Bill at Stage 1

The Delegated Powers and Law Reform Committee considered the above Bill at its meeting on 10 March 2020 and seeks an explanation of the following matter:

Section 1(1), read with schedule 1 and section 4(1) and (3) – power to make a Scottish Pubs Code

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative procedure

Section 1(1) requires the Scottish Ministers to make regulations imposing requirements and restrictions on pub-owning businesses in connection with tied pubs. Schedule 1 sets out further details of what may and must be included in the Scottish Pubs Code regulations.

The power in section 1(1) is wide in its scope and the provision in Schedule 1 is without prejudice to the generality of that power. In particular, the provision required and capable of being made under the regulations will impact on the rights of pub-owning businesses by providing for the regulation of their actions in their dealings with tied-pub tenants. For example, paragraph 4 of Schedule 1 states that the Code must require a pub-owning business to offer a guest-beer agreement and paragraph 5 of Schedule 1 provides that the Code must require a pub-owning business to offer a market rent only lease to the tied-pub tenant.

In light of the wide scope and the significance of the power in section 1(1), would a form of “super-affirmative procedure” be more appropriate? This would afford the Parliament the opportunity to conduct enhanced scrutiny of the regulations setting the Code.

I'd be grateful if you could please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 5pm on Wednesday 8 April 2020.

Thank you.

Andrew Proudfoot

Clerk to the Delegated Powers and Law Reform Committee