

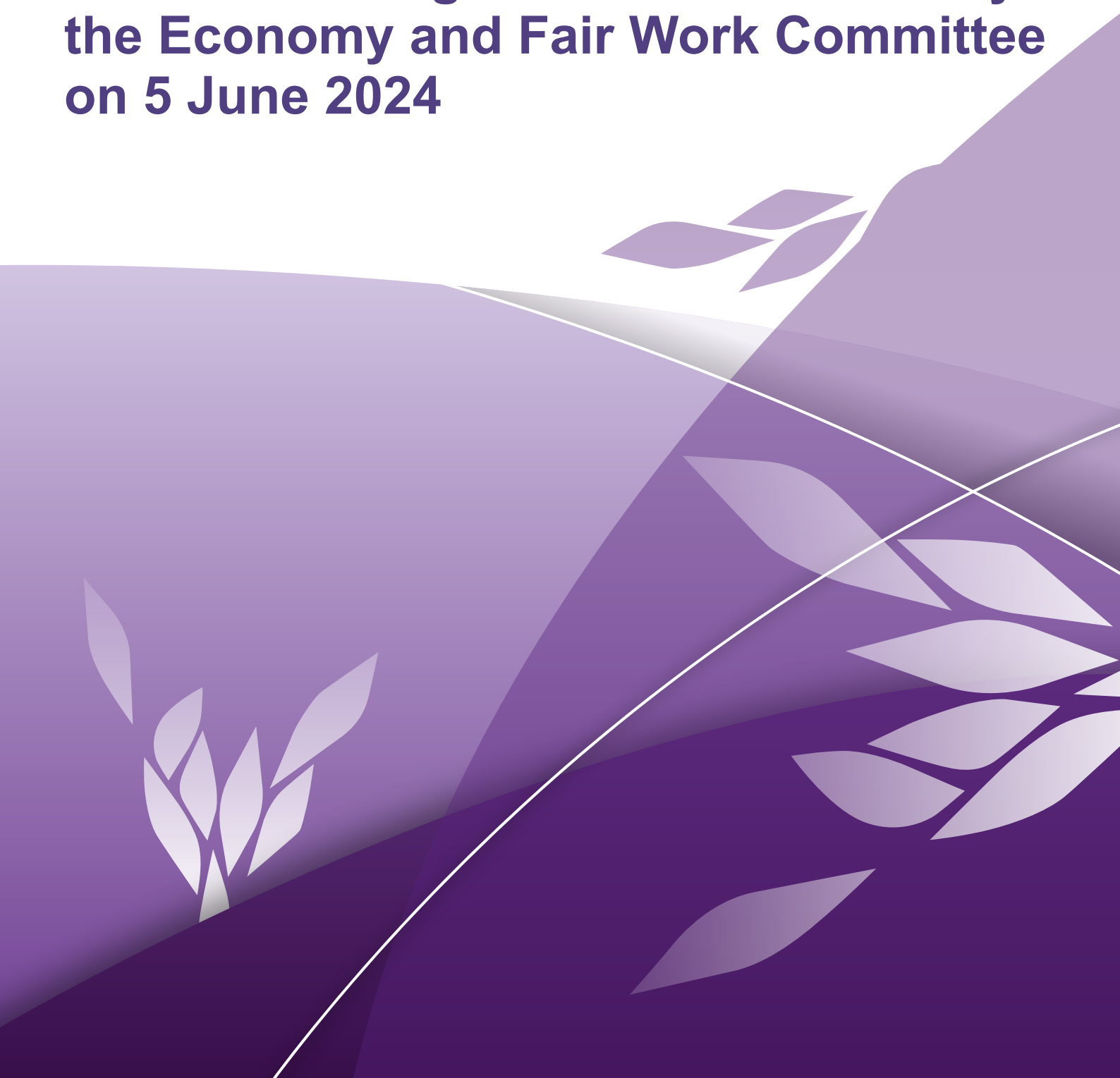


The Scottish Parliament  
Pàrlamaid na h-Alba

Published 6 June 2024  
SP Paper 615  
7th Report, 2024 (Session 6)

## **Economy and Fair Work Committee**

# **Subordinate legislation considered by the Economy and Fair Work Committee on 5 June 2024**



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

---

All documents are available on the Scottish  
Parliament website at:  
[http://www.parliament.scot/abouttheparliament/  
91279.aspx](http://www.parliament.scot/abouttheparliament/91279.aspx)

For information on the Scottish Parliament contact  
Public Information on:  
Telephone: 0131 348 5000  
Textphone: 0800 092 7100  
Email: [sp.info@parliament.scot](mailto:sp.info@parliament.scot)

# Contents

<b>Introduction</b>	<b>1</b>
<b>About the instruments</b>	<b>2</b>
<b>Consideration by the DPLR Committee</b>	<b>4</b>
<b>Consideration by the Economy and Fair Work Committee</b>	<b>6</b>

# Economy and Fair Work Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Wellbeing Economy, Net Zero and Energy, with the exception of matters relating to net zero and energy.



[economyandfairwork.committee@parliament.scot](mailto:economyandfairwork.committee@parliament.scot)



0131 348 5975

# Committee Membership



**Convener**  
**Claire Baker**  
Scottish Labour



**Deputy Convener**  
**Colin Beattie**  
Scottish National Party



**Maggie Chapman**  
Scottish Green Party



**Murdo Fraser**  
Scottish Conservative  
and Unionist Party



**Gordon MacDonald**  
Scottish National Party



**Colin Smyth**  
Scottish Labour



**Kevin Stewart**  
Scottish National Party



**Evelyn Tweed**  
Scottish National Party



**Brian Whittle**  
Scottish Conservative  
and Unionist Party

# Introduction

1. This report concerns five instruments, laid before the Parliament by the Scottish Government on 2 and 3 May 2024—

- [Scottish Pubs Code Regulations 2024](#);
- [Tied Pubs \(Fees and Financial Penalties\) \(Scotland\) Regulations 2024](#);
- [Scottish Pubs Code Adjudicator \(Miscellaneous Listings\) Order 2024](#);
- [The Scottish Pubs Code Adjudicator \(Duty to Publish Certain Information\) Regulations 2024](#); and
- [Tied Pubs \(Scottish Arbitration Rules\) Amendment Order 2024](#).

The instruments, which were laid in draft, are subject to the affirmative procedure – which means they cannot be made unless they have been approved by a resolution of the Parliament.

2. It is for the Economy and Fair Work Committee, as lead committee, to decide whether or not to recommend approval.

# About the instruments

## The Scottish Pubs Code Regulations 2024

3. This instrument creates a Scottish Pubs Code ("the Code") for tied pubs. The [Tied Pubs \(Scotland\) Act 2021](#) requires that Scottish Ministers establish a pubs code in Scotland, and that this code must adhere to three principles—
  - fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants;
  - tied-pub tenants should not be worse off than they would be if they were subject to neither a product tie nor a service tie; and
  - any agreement between a pub-owning business and a tied-pub tenant should fairly share the risks and rewards amongst the parties.

## The Tied Pubs (Fees and Financial Penalties) (Scotland) Regulations 2024

4. These regulations set out the maximum financial penalty that the Adjudicator can impose on a pub-owning business for not complying with the code. This is set at a maximum of 1% of the pub-owning businesses annual turnover (and where the pub-owning business is part of a group, this calculation will use the combined group turnover). This is consistent with the maximum financial penalties under the Pubs Code in England and Wales.
5. The regulations also set the fee which will be payable by a tied-pub tenant who submits a dispute for resolution at £250. The Pubs Code in England and Wales set this equivalent fee at £200 in 2016.

## Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024

6. This Order makes the Adjudicator subject to duties on records management and freedom of information, consistent with other public bodies, and to allow Scottish Ministers to make provision to improve efficiency, effectiveness, and economy in the Adjudicator under Part 2 of the Public Services Reform (Scotland) Act 2010.

## The Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2024

7. These regulations require the Adjudicator to publish certain information under the Public Services Reform (Scotland) Act 2010. The requirements are that the Adjudicator publishes an annual statement on expenditure on public relations, hospitality, entertainment, overseas travel, and external consultancy, on any payments over £25,000 and the number of staff who receive more than £150,000 in remuneration during the financial year.

## The Tied Pubs (Scottish Arbitration Rules) Amendment Order 2024

8. This instrument allows the Adjudicator to choose to apply the Scottish Arbitration Rules, which were established in the Arbitration (Scotland) Act 2010, rather than either the Chartered Institute of Arbitrators or any other dispute resolution body as required by the Tied Pubs (Scotland) Act 2021. The adjudicator would need to apply

the rules consistently to all arbitrations.



# Consideration by the DPLR Committee

9. The Delegated Powers and Law Reform (DPLR) Committee is required to consider every instrument laid before the Parliament and decide whether to draw it to the attention of the Parliament on any of the “reporting grounds” set out in Rule 10.3 of the Parliament's standing orders.
10. The DPLR Committee considered the three instruments listed below at its [meeting on 14 May 2024 and agreed](#) that they did not need to be drawn to the Parliament's attention on any of the reporting grounds—
  - Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024;
  - Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2024; and
  - Tied Pubs (Scottish Arbitration Rules) Amendment Order 2024. <sup>1</sup>
11. The DPLR Committee considered the remaining two instruments at its meeting on 21 May 2024. In its [report](#), it drew these to the Parliament's attention.

## Scottish Pubs Code Regulations 2024

12. The DPLR Committee noted that, under the parent Act, this instrument should have been lodged by 6 May 2023, but accepted that a legal challenge to the Act prevented the Scottish Government from meeting this requirement.
13. The DPLR Committee raised three aspects of the regulations with the Scottish Government—
  - It queried the compatibility of key elements of the Code with article 1 of protocol 1 of the European Convention of Human Rights. It drew [the Scottish Government's explanation](#) to this Committee's attention, and was content that no reporting ground was engaged in relation to Convention rights or legislative competence.
  - It queried a requirement imposed around market rent only (MRO) leases, and was content [with the Scottish Government's explanation](#) .
  - Finally, it queried whether regulation 17 (10) achieved its stated policy intention. The Scottish Government noted this point and [indicated it intends to lodge an amending instrument](#).
14. The DPLR Committee drew this instrument to the attention of the Parliament on the general reporting ground and welcomed the Scottish Government's undertaking to bring forward an amending instrument to correct the error.

## Tied Pubs (Fees and Financial Penalties) (Scotland) Regulations 2024

15. The DPLR Committee raised two aspects of the regulations with the Scottish Government—
  - It queried the wording of regulation 4(2) around businesses being part of a

“group undertaking”. In response, the Scottish Government agreed this was not sufficiently clear, and it intends to lodge an amending instrument.

The DPLR Committee has therefore drawn the instrument to the attention of the Parliament on reporting ground (h) (meaning that it could be clearer) and welcomes the intention of the Scottish Government to lodge an amending instrument.

- The Committee also queried a provision in regulation 4 regarding the method of calculating a businesses’ “annual turnover”.

It was content with the [explanation provided by the Scottish Government](#) and drew the explanation to the attention of this Committee.

# Consideration by the Economy and Fair Work Committee

16. The Minister for Employment and Investment [wrote to the Economy and Fair Work Committee](#) on 30 May acknowledging concerns from the sector about the Scottish Pubs Code and stating he intended to undertake "a short, focused and targeted consultation about how the Scottish Pubs Code could be amended". He also noted his intention to lay amending regulations to address the points made by the DPLR Committee in its report.
17. The Committee also received written representations from the [Scottish Beer & Pub Association](#) and the [Scottish Licensed Trade Association](#) outlining several concerns with the regulations as drafted.
18. At its meeting on 5 June 2024, the Committee took evidence on the instruments from the Minister and officials.
19. The Minister acknowledged the technical issues highlighted by the DPLR Committee, as well as the wider issues raised by stakeholders, and committed to lay amending regulations to delay the commencement of the Code after further consultation over the summer. The Minister apologised to the Committee and said he expected that a revised Code would be in place no later than early 2025.
20. The Committee questioned the rationale for being asked to approve regulations in the knowledge that further consultation is to be undertaken and amending regulations will be required. The Minister acknowledged the concern, noting that—  

” Were it considered by the government possible to withdraw the regulations, that is the approach that we would take. However, we are in a position where we have had to bring forward the regulations to comply with the requirements set out in the Act. That was a decision by Parliament and Ministers are bound by statute.
21. The Committee accepted this explanation, and welcomed the Minister's commitment to consult further to address the issues identified and to lodge further amending regulations.
22. Following the oral evidence, the Minister moved the following motions—  

S6M-13351—

That the Economy and Fair Work Committee recommends that the Scottish Pubs Code Regulations 2024 [draft] be approved.

S6M-13353—

That the Economy and Fair Work Committee recommends that the Tied Pubs (Fees and Financial Penalties) (Scotland) Regulations 2024 [draft] be approved.

S6M-13348—

That the Economy and Fair Work Committee recommends that the Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024[draft] be approved.

S6M-13347—

That the Economy and Fair Work Committee recommends that the Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2024 [draft] be approved.

S6M-13352—

That the Economy and Fair Work Committee recommends that the Tied Pubs (Scottish Arbitration Rules) Amendment Order 2024 [draft] be approved.

23. All five motions were agreed to, on the understanding that further consultation would take place and in the expectation that amending regulations will be laid.

### **Recommendation**

24. **Accordingly, the Committee recommends to the Parliament that the following instruments be approved—**

- **Scottish Pubs Code Regulations 2024;**
- **Tied Pubs (Fees and Financial Penalties) (Scotland) Regulations 2024;**
- **Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024;**
- **The Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2024; and**
- **Tied Pubs (Scottish Arbitration Rules) Amendment Order 2024.**

- 1 [Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 14 May 2024](#)

