

POLICY NOTE

THE TIED PUBS (SCOTLAND) ACT 2021 (COMMENCEMENT NO. 1) REGULATIONS 2024

SSI 2024/113

The above instrument was made in exercise of the powers conferred by section 25(2) of the Tied Pubs (Scotland) Act 2021. This instrument is laid in the Scottish Parliament in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Summary Box

The Scottish Pubs Code Adjudicator is a new statutory body established by the Tied Pubs (Scotland) Act 2021¹. The Adjudicator will be appointed following a parliamentary resolution.

The purpose of this instrument is to commence sections 2, 13 and Schedule 2 of the Act. This allows for the Scottish Pubs Code Adjudicator to be established and for an investigation policy statement to be developed by the Adjudicator.

Policy Objectives

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

Tied pubs are pubs which are owned by a pub-owning business and leased to a tenant. Tenants must buy some or all of their products and services from the pub-owning business (their landlord) or someone nominated by the pub-owning business ("the tie"). Ties can include, for example, beer and these products and services are often charged at a higher cost than on the open market. In return, tenants sometimes pay lower rent and receive other support from the pub-owning business.

The Adjudicator's powers include:

- arbitration in disputes between the pub-owning business and tenants;
- setting criteria for a rent assessor or appointing a rent assessor for market rent only negotiations;
- publishing an investigation policy;
- investigating non-compliance with the code;
- giving advice and guidance on the code and carrying out enforcement actions (which include financial penalties).

The role of the Adjudicator is also to raise awareness of the code and the Adjudicator's role amongst tied tenants and the pub-owning businesses in scope of the code.

¹ <https://www.legislation.gov.uk/asp/2021/17/contents/enacted>

EU Alignment Consideration

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

Consultation

Given the technical nature of this instrument a formal consultation exercise was not undertaken. An informal and quick consultation took place with the Scottish Licensed Trade Association (SLTA) and the Scottish Beer and Pub Association (SBPA) on the draft SSI in 2023. The SLTA confirmed that they were content with the draft SSI and no reply was received from the SBPA. The commencement date has since been changed, due to a court action brought forward by three pub-owning businesses.

Substantial formal and informal consultation has taken place on the implementation of the Act more generally, specifically on the development of the Scottish Pubs Code.

The Information Commissioner's Office has also been consulted on the proposed package of secondary legislation to implement the Tied Pubs (Scotland) Act as required by Article 36(4) of the UK General Data Protection Regulation. They highlighted a few data protection considerations and advised that the Adjudicator and/or the Scottish Pubs Code will want to give consideration to:

- retention – how long will personal data be stored;
- the fields of personal data that might be involved to ensure that it is kept to the minimum necessary for the required purpose;
- use of information about criminal offences that may need to be disclosed to the Adjudicator under these provisions.

Note the last point relates to a possible provision in the Scottish Pubs Code which will be laid at a later date.

Impact Assessments

The following Impact Assessments have been or are being prepared for the implementation of the Act and for the supporting instruments:

- Business and Regulatory Impact Assessment
- Child Rights and Wellbeing Impact Assessment (screening)
- Equalities Impact Assessment
- Data Protection Impact Assessment
- Strategic Environmental Assessment (pre-screening notification)
- Fairer Scotland Duty
- Island Communities Impact Assessment

These impact assessments will be published alongside the remaining secondary legislation including the Scottish Pubs Code, expected to be laid in the coming weeks.

As this is a technical instrument, no effects on equality, children, privacy, environment, island communities or fairer Scotland are anticipated in relation to them, and no specific impact assessments have been prepared in relation to the commencement of the provisions in question by these regulations.

Financial Effects

The financial effects of this policy were set out under the financial memorandum which accompanied the Bill for the 2021 Act. In addition, two Business and Regulatory Impact Assessments (BRIAs) have also been produced for the SSIs that will implement the Act and have financial effects for business and government. These BRIAs will be published alongside the remaining SSIs shortly.

Scottish Government
Directorate for Agriculture and Rural Economy

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