

Economy and Fair Work Committee
Wednesday 5 June 2024
18th Meeting, 2024 (Session 6)

Note by the Clerk on five Scottish Statutory Instruments relating to the Tied Pubs (Scotland) Act 2021

Overview

1. At this meeting, the Committee will take evidence from the Minister for Employment and Investment and officials on five instruments, before debating the five motions in turn, in the name of the Minister, inviting the Committee to recommend approval of each instrument.
2. These are draft Scottish Statutory Instruments (SSIs), which require approval by resolution of the Parliament before they can become law. More information about each of the instruments is summarised below—

Title of instruments:

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

Laid under: [The Tied Pubs \(Scotland\) Act 2021](#)

Laid on: 2 and 3 May 2024

Procedure: Affirmative

Lead committee to report by: 10 and 11 June 2024

Commencement: If approved, the instruments come into force on 7 October 2024

3. **The Minister wrote to the Committee on 30 May 2024 regarding the Scottish Pubs Code Regulations 2024, this letter is attached in the annexe.**

Procedure

4. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
5. Once laid, the instrument is referred to—
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds; and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
6. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.
7. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee—
 - an evidence session with the Minister and officials, followed by
 - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
8. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument

Delegated Powers and Law Reform Committee consideration

9. The DPLR Committee considered three of the five instruments on 14 May 2024 and reported in its [36th Report, 2024](#). It made no recommendations in relation to these instruments—
 - 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.
10. It considered the remaining two instruments on 21 May 2024 and reported in its [37th Report, 2024](#) as follows—

Scottish Pubs Code Regulations 2024

11. The DPLR Committee noted that, under the parent Act, the 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.
12. The DPLR Committee raised three aspects of the regulations with the Scottish Government—
 - I. 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.
 - II. It queried a requirement imposed around market rent only (MRO) leases, and was content [with the Scottish Government's explanation](#) for this.
 - III. 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](#).

The DPLR Committee drew this instrument to the attention of the Parliament on the general reporting ground and welcomed the Scottish Government's commitment to make an amending instrument to correct the error.

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

13. The DPLR Committee raised two aspects of the regulations with the Scottish Government—
 - I. 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.
 - II. 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 draws the explanation to the attention of this Committee.

Purpose of the instruments

The Scottish Pubs Code Regulations 2024

14. This instrument creates a Scottish Pubs 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

15. 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.
16. 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

17. 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

18. 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

19. 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.
20. The Policy Notes accompanying the instruments are included in the annexe. These include a summary of consultation undertaken on the instruments, impact assessments carried out, and the anticipated financial effects.

Report

21. **Following today's proceedings, a draft report will be prepared by the clerks. The Committee is invited to delegate responsibility for agreeing the draft report to the Convener.**

**Clerks to the Committee
May 2024**

Annexe A: Scottish Government Policy Notes

POLICY NOTE THE SCOTTISH PUBS CODE REGULATIONS 2024 SSI 2024/XXX

The above instrument was made in exercise of the powers conferred by sections 1, 7 and 23 and Schedule 1 of the Tied Pubs (Scotland) Act 2021. The instrument is subject to the affirmative procedure.

Summary Box

This instrument will create a Scottish Pubs Code for tied pubs. It creates rights and protections for tied pub tenants and places requirements on pub-owning businesses (the tied pub landlords). It is the main instrument to implement the Tied Pubs (Scotland) Act 2021.¹ It has been prepared consistently with the three regulatory principles set out in the Act. These are:

- (a) the principle of fair and lawful dealing by pub-owning businesses in relation to their tied- pub tenants,
- (b) the principle that tied-pub tenants should not be worse off than they would be if they (c) were subject to neither a product tie nor a service tie,
- the principle that any agreement between a pub-owning business and a tied-pub tenant should fairly share the risks and rewards amongst the parties.

Policy Objectives of the Act

The Tied Pubs (Scotland) Act 2021 received Royal Assent in May 2021. 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 ("the tie") from the pub-owning business (their landlord) or someone nominated by the pub-owning business. 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.

Policy Objectives of the SSI

The aim of the Scottish Pubs Code is to improve the position of tied pub tenants through creating a statutory framework to govern the relationship between pub-owning businesses and their tied pub tenants. The Scottish Government supports the principle of fair and equitable treatment within tied pub leases and has a desire to see a vibrant tenanted pub sector in Scotland. As of May 2023, it is estimated there were just under 700 tied pubs in Scotland.

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

Concerns about fairness in the relationship between tied pub tenants and pub-owning businesses led to the UK Government creating a statutory Pubs Code and a Pubs Code Adjudicator in England and Wales in 2016, to regulate the largest tied pub-owning businesses who own 500 or more tied pubs. In 2020 Neil Bibby MSP introduced a Members Bill to deliver protections for tied pub tenants in Scotland. The Scottish Government agreed to support the Tied Pubs (Scotland) Bill in December 2020. This was in response to the evidence put forward at Stage 1 of the Bill, the response to the UK Government's review of the Pubs Code and Pubs Code Adjudicator in England and Wales, and the likelihood that legislation would be required at some point to implement the Economy, Jobs and Fair Work Committee's recommendations on the Bill. The Tied Pubs (Scotland) Act 2021 was passed unanimously by the Scottish Parliament on 23 March 2021.

Much of what the code must contain is already pre-determined by the Act and some of the key things the code will do include:

Market Rent Only

The code will require pub-owning businesses to offer Market Rent Only (MRO) leases in certain circumstances when requested by tenants. An MRO lease is a lease which is free of ties and does not contain any unreasonable terms.

The MRO lease element is one of the main ways that a tenant can check that they are not worse off than they would be if they didn't have any ties, and thus contributes towards the second regulatory principle.

The Scottish Government recognises that to fulfil the third regulatory principle, there needs to be a fair share of risk and reward in agreements between tenants and pub-owning businesses.

The Scottish Government has sought to develop a balanced approach: giving tenants their rights to request Market Rent Only (MRO) whilst giving pub-owning businesses some certainty of return under their current agreement. This has resulted in the code allowing pub-owning businesses to not provide MRO leases in the following circumstances:

- For short-term leases (less than one year, unless this is a renewed lease);
- If tenants are in the first half of their lease e.g. in year two of a five year lease;
- Where the tenant has previously requested an MRO lease in the past two years;
- Where either the tenant or the pub-owning business have submitted a valid notice to bring the lease to an end; or
- Where there is an investment agreement in place for the pub between the pub-owning business and the tenants (the investment must be at least 1.5x annual rent or £35,000 whichever is greatest) there is a five-year exemption from offering MRO. This exemption is to provide certainty to pub-owning businesses to recoup substantial investment in a pub.

The code also sets out a process to request MRO leases. Drawing upon the experience in England and Wales, the Scottish Government has sought to create an MRO lease process which is more straightforward, flexible and easy to use.

The code sets out terms that would be unreasonable to include in an MRO lease. Most of these are terms which are more onerous than the terms contained in a tenant's existing lease, such as a lease period which is shorter than the remaining period of the current lease.

Guest Beer Agreements

The code will require businesses to offer a guest beer agreement in certain circumstances when requested by tenants. A guest beer agreement allows a tenant to sell to their customers at least one beer that the tenant has chosen, at a price of the tenant's choice. The beer can be changed as often as the tenant wishes.

The code sets out that guest beer agreements should be restricted to brands of beer with a small production capacity of up to 5,000hL. Using sales data as a proxy for production, we estimate this will give tenants access to 96% of beer brands. This approach best meets the regulatory principle around a fair share or risk and rewards, as it is less likely (than if there were no production restriction) to result in sales of guest beer substantially replacing sales of beer supplied by the pub-owning business through the tie.

The Scottish Government is seeking to keep guest beer arrangements straightforward and simple for tenants and pub-owning businesses, therefore there is only one exemption where the pub-owning business is not required to offer a guest beer agreement when a tenant requests one. The exemption provides that pub-owning businesses need not offer a guest beer agreement when tenants have already agreed a guest beer agreement that matches the set criteria for guest beers under the Act.

Information and advice to prospective tenants

Before a tenant enters into a new or renewed lease, or develops a business plan, we are requiring the pub-owning business to make certain information available to existing and prospective tied pub tenants, to ensure fair and lawful dealing and also to enable tied pub tenants to make an assessment in relation to the second and third regulatory principles (not worse off than if they weren't subject to a tie; and a fair share of risk and rewards between the parties). Pub-owning businesses will also be required to advise certain tenants to undertake pre-entry training and to advise tenants to prepare a business plan based on independent advice and provide information on sources of independent advice. The pub-owning business is required to have due regard to the business plan when negotiating a new or renewed lease.

Rent review

A pub-owning business is required to give the tenant a rent assessment statement as part of a rent review process either as provided for within their contract or as part of a rent review under the code. A rent assessment statement should also be provided to prospective tenants. The code sets out what information must be provided and what must be included in a rent assessment statement.

The code provides for a tenant to request a rent review under the code: where a rent review is not already included in a lease, the lease is longer than 12 months and if a rent review or a rent assessment has not occurred within the past 5 years.

Rent reviews are a key part of the ongoing relationship between landlord and tenant and represent an opportunity to support the third regulatory principle “that any agreement between a pub-owning business and a tied-pub tenant should fairly share the risks and rewards amongst the parties.”

Other

The code also sets out arrangements, processes and information requests for other aspects of the tied tenant-landlord relationship. Many of these requirements must be included in the code because of the Act.

The code sets out how disputes are to be resolved and what cannot be taken to the Adjudicator for arbitration.

The code requires pub-owning businesses to provide information to the Adjudicator so that the Adjudicator knows which pub-owning businesses are operating in the Scottish market and fall under the regulatory regime.

The code prevents pub-owning businesses from requiring a tenant to purchase, or rent, gaming machines. It also prevents a pub-owning business from subjecting a tenant to a detriment or imposing a liability on a tenant because of a reading from a flow monitoring device unless a specific condition is satisfied.

EU Alignment Consideration

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

Consultation

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.

Ahead of formal consultation, in summer 2021 four workshops were run with key stakeholders. This included the Scottish Licensed Trade Association (representing tenants’ views), the Scottish Beer and Pub Association (SBPA) (representing most pub-owning businesses) together with some pub-owning business representatives. In addition, further consultation meetings also took place with the Royal Institute of Chartered Surveyors (RICS), individual pub-owning businesses who are not members of SBPA, Pubs Advisory Service, SIBA (the Society of Independent Brewers) and CAMRA (the Campaign for Real Ale).

Two workshops² were also run with five tied pub tenants.

² <https://www.gov.scot/publications/tied-pubs-consultation-scottish-pubs-code-workshops-tenants/>

Two written consultations on parts of the Scottish Pubs Code were run from 8 November 2021 to 17 January 2022³ and from 17 March 2022 to 12 May 2022.⁴ Consultation analyses were produced for the first⁵ and the second⁶ consultation.

For the first consultation, we received a total of 34 responses to the public consultation, with 14 individuals and 20 organisations responding. 11 responses were from tied pub tenants and 6 responses were from pub-owning businesses.

Respondents generally had mixed views on the proposals. Tenants broadly welcomed the proposals around MRO leases and guest beer agreements. However, pub-owning businesses had a number of concerns, especially on the unintended consequences of the proposals.

Respondents had mixed views on the proposal to exempt leases from MRO after investments for 5 years; tied pub tenants tended to disagree whilst pub-owning businesses agreed.

On guest beer agreements, some participants felt that the focus in terms of eligible products should be on the type of brewery rather than on the production level of brands of beer. The Tied Pubs (Scotland) Act 2021 sets out that a guest beer agreement must allow a tenant to sell at least one beer of their own choice, regardless of who produces it. This means we cannot use the code to restrict guest beer agreements to any particular type or category of producer, such as small brewers.

On the partial Business and Regulatory Impact Assessment (BRIA) some pub-owning businesses expressed a number of concerns with the partial BRIA.

As a result of the first consultation, changes to the draft code on MRO leases included:

- extending the negotiation period to 8 weeks;
- having a single investment exemption whereby pub-owning businesses do not need offer a MRO lease;
- continue to exempt short-term leases from MRO but provide that short-term leases cannot be continually renewed as a way of preventing access to MRO.

On guest beer, following the consultation, further work was carried out to refine the appropriate production level and to identify impacts. Cans were added to the draft code as being eligible for a guest beer and most of the exemptions were removed from the draft code to keep arrangements straightforward.

On the second consultation, we received a total of 30 responses, with 14 individuals and 16 organisations responding. 6 responses were from tied pub tenants and 6 responses were from pub-owning businesses. Respondents generally had mixed views on the proposals. There were some differences in views between pub-owning businesses and tied pub tenants.

³ <https://www.gov.scot/publications/tied-pubs-consultation-scottish-pubs-code-part-1/>

⁴ <https://www.gov.scot/publications/tied-pubs-scottish-pubs-code-part-2-consultation/pages/1/>

⁵ <https://www.gov.scot/publications/tied-pubs-scottish-pubs-code-part-1-consultation-analysis/>

⁶ <https://www.gov.scot/publications/scottish-pubs-code-consultation-2-analysis-report/>

There was general support for the proposals around providing information and advice to new and renewing tenants.

On rent review, pub-owning businesses had concerns about the proposed triggers for the proposed rent reviews, which they often felt were not well enough defined. As a result, we removed the right to a rent review in response to changing material circumstances in the draft code and focused the rent review arrangements on those tenants in a longer lease who might not otherwise have the opportunity to assess their rent.

Further discussions took place with the SBPA, their pub-owning businesses and the SLTA towards the end of 2022.

A short, focused consultation was carried out on MRO process from 19 July 2023 to 21 August 2023. Four responses were received. There was general agreement on most of the proposals. There were, however, mixed views about whether any process for considering whether a valid MRO request has been received should be included in guidance rather than legislation, so this has not been included in the code.

The Information Commissioner's Office has also been consulted on the proposed package of secondary legislation to implement the Tied Pubs (Scotland) Act 2021 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 include some early thinking about:

- 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;

Impact Assessments

The following Impact Assessments have been prepared for the supporting instruments which implement the Act:

- [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 (screening)

These impact assessments will be published on the Scottish Government website.

This instrument is anticipated to have minimal to no impacts on children, the environment and island communities.

In terms of the Fairer Scotland Duty assessment, it was identified that we do not have data on the impact that implementation of the Act is likely to have on the

incomes of tied pubs tenants and those that they employ. We cannot know whether changes would be uniformly made in the sector across different areas of deprivation.

There may be a difference in awareness and take-up of information about proposed changes to the Adjudicator and rights (parts of the code) between tied pub tenants with less and those with more socio-economic disadvantage and between those with better and worse IT skills, based on the England and Welsh experience. There may also be an uneven impact amongst tenants of pub-owning businesses moving to other types of business models and selling tied pubs. The assessment identifies some actions to address awareness and take-up of the code.

On equality impacts, it was identified that we do not have data on the demographic make-up of the tied pub tenant population in Scotland. However, in general, successful implementation of the Act would mean that tenant and pub-owning business relationships are fairer and more balanced, which should minimise discrimination on any basis, protected characteristic or otherwise.

On data protection, the main impact was around the establishment of the Adjudicator and making sure they are aware of their obligations. The Scottish Pubs Code may also require pub-owning businesses to disclose publicly available enforcement action against the pub in the last two years relating to health and safety and planning.

Impacts on business are detailed in the financial effects section below.

Financial Effects

A [Business and Regulatory Impact Assessment \(BRIA\)](#) has been completed for the following SSIs:

- The Scottish Pubs Code Regulations 2024
- The Tied Pubs (Fees and Financial Penalties) (Scotland) Regulations 2024
- The Tied Pubs (Scottish Arbitration Rules) Amendment Order 2024

The BRIA is attached and is also available on the Scottish Government website. The BRIA sets out the cost and benefits of various options for pub-owning businesses and tied pub tenants.

We anticipate that the Scottish Pubs Code will result in a financial transfer largely from pub-owning businesses to tied pub tenants in line with regulatory principle three, concerning a fair share of risk and reward, but this will not be uniform and will likely reduce over time as the market responds to reduce this risk. The BRIA sets out the various options and models considered.

Market Rent Only

The cost of introducing MRO arrangements as set out above (the limited code option in the BRIA) are estimated to benefit an individual tenant between £0-£23,800 and for all tenants result in benefits of £0-£16.7 million per year. Pub-owning businesses are estimated to experience the same level of losses. These are estimates recognising that the costs and benefits are situation specific, and their value can be highly subjective. Tenants would also face costs of independent assessment, where this occurs. It would however also provide greater operational flexibility for tenants.

Market Rent Only leases would, for pub-owning businesses, lead to a reduction in risk from market fluctuations due to higher dry rent under a MRO lease. The code may result in a reduction in the number of tied pubs and both pub-owning businesses reducing the benefits in the long-run.

Guest beer

Under the guest beer agreements set out above (the minimal code option in the BRIA). The tenant is expected to have economic benefits between £800 and £5,900 a year with the same level of losses by the pub-owning business per tied pub, where the tenant requests and is eligible for a guest beer. This represented an overall estimated benefit to tenants ranging from £0.1 million to £1.0 million per year, with pub-owning businesses experiencing the same range of costs. However, if the pub-owning business is the provider of the guest beer, then some of this loss will be offset. In the longer-term pub-owning businesses may seek to recover lost revenue by increasing dry-rent therefore the benefits of a guest beer agreement may be partially or fully offset in the long-run.

Rent reviews

The approach to create a rent review right within the code (the limited code option in the BRIA), provides tenants with increased bargaining power in the negotiation of rent and leading to potentially more favourable rent arrangements, as well as greater transparency in the process. There would be costs in terms of time and resource for tenants to understand the rent assessment statement, negotiating rent or seeking independent advice. Costs to pub-owning businesses are estimated to be at £1,500 to £2,500 per tied pub that requests a rent review and there would be increased uncertainty about rent levels and future revenues for the pub-owning business. However, we have been unable to quantify how many leases it would impact. We understand that the market is moving to shorter leases (i.e. less than 5 years) and many existing leases do already have rent review arrangements within them. The impact is therefore likely to be small for pub-owning businesses, but the options could provide benefits to any eligible individual tenants to check there is a fair share of risk and reward.

The code also creates other requirements on pub-owning businesses which will create further financial impacts.

Scottish Government
Directorate for Agriculture and Rural Economy
May 2024

POLICY NOTE
THE TIED PUBS (FEES AND FINANCIAL PENALTIES) (SCOTLAND)
REGULATIONS 2024
SSI 2024/XXX

The above instrument was made in exercise of the powers conferred by sections 10(3) and 17(1) of the Tied Pubs (Scotland) Act 2021. The instrument is subject to the affirmative procedure.

Summary Box

The Tied Pubs (Scotland) Act 2021⁷ requires the creation of a statutory Scottish Pubs Code and the appointment of a Scottish Pubs Code Adjudicator to oversee and enforce the code.

The purpose of this instrument is to set out the maximum financial penalty that the Adjudicator can impose on a pub-owning business for non-compliance with the code. The instrument also sets out the fee level for tenants to submit a dispute to the Adjudicator for arbitration. This instrument will support compliance with the code.

Policy Objectives of the Act

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. The role of the Adjudicator is to oversee and enforce the code.

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 companies in scope of the code.

Policy Objectives of the SSI

The purpose of this instrument is to set maximum limits on financial penalties and determine the arbitration fee for tenants in disputes. This will fulfil the Scottish Ministers duty to define the permitted maximum financial penalty and the duty to provide for a fee to be paid, both of which are required under the Act. The instrument

⁷ <https://www.legislation.gov.uk/asp/2021/17/contents/enacted>

will therefore support the Adjudicator's role in the investigation and enforcement of the code.

Financial penalties

The Tied Pubs (Scotland) Act 2021 provides for the Adjudicator to take enforcement action, such as a financial penalty when they are satisfied that a pub-owning business has failed to comply with the code. The enforcement action might include imposition of a financial penalty on the business. To ensure that pub-owning businesses, which vary in size, are impacted proportionally, the SSI determines the maximum financial penalty as 1% of the pub-owning business's annual turnover. Where the business is part of a wider pub-owning group then the percentage will apply to the combined annual turnover of the group in the UK. This represents a significant penalty. The Adjudicator can also apply a smaller penalty to take into account the nature and severity of the breach.

Fees for arbitration

The Tied Pubs (Scotland) Act 2021 allows the Adjudicator to arbitrate in disputes between a tied pub tenant and pub-owning business on whether the latter has complied with the Scottish Pubs Code.

Under section 17(1) to (3) of the Act, Scottish Ministers must provide for a fee to be paid to the Adjudicator, or a person appointed by the Adjudicator, by a tied-pub tenant who submits a dispute for arbitration. The fee should be fair and proportionate and set at a level that both discourages vexatious or minor disputes being brought forward but does not prevent the submission of necessary requests for arbitration. We have considered relevant comparators. The equivalent fee for arbitration under the Pubs Code for England and Wales, which was set in 2016, is £200. Given inflationary pressures, we have concluded that the fee should be £250 and this should be payable at the time the dispute is submitted for arbitration.

EU Alignment Consideration

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

Consultation

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. A written consultation was run from 17 March to 12 May 2022, which included proposals on financial penalties and fees and expenses for arbitration. An analysis⁸ of the consultation responses was produced.

Financial penalties

There were mixed views in response to the consultation proposals. On financial penalties some respondents wanted a higher maximum penalty and others had concerns about the method used to calculate turnover. Some pub-owning

⁸ <https://www.gov.scot/publications/scottish-pubs-code-consultation-2-analysis-report/pages/3/>

businesses commented that any penalty should be based on turnover for their Scottish pub business only, and it was not fair to calculate turnover based on other parts of their business. We have decided to keep it at this level to act as a deterrent and to encourage compliance with the Scottish Pubs Code. From analysis of final penalties imposed under the Pubs Code in England and Wales, Scottish Ministers anticipate that the maximum financial penalty would only be applied in cases of repeated non-compliance.

Fees for arbitration

Most respondents to the consultation agreed that the fee should be set at £250.

Impact Assessments

The following Impact Assessments have been prepared for the supporting instruments which implement the Act:

- [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 (screening)

These impact assessments will be published on the Scottish Government website.

The instrument is anticipated to have minimal to no impacts on children, environment, island communities and data protection. The fairer Scotland duty assessment identified there could be a difference in awareness and take-up of information about changes to the Adjudicator and rights (parts of the code) between tied pub tenants with less and those with more socio- economic disadvantage and between those with better and worse IT skills, based on the England and Welsh experience. This could also apply to tenants' rights to arbitrate disputes – however all tenants responding to the consultation were content with the arbitration fee being set at £250.

On equality impact, it was identified that we do not have data on the demographic make-up of the tied pub tenant population in Scotland. However, in general, successful implementation of the Act would mean that tenant and pub-owning business relationships are fairer and more balanced, which should minimise discrimination on any basis, protected characteristic or otherwise.

Impacts on business are detailed in the financial effects section below.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed for the following SSIs:

- Scottish Pubs Code Regulations 2024;

- The Tied Pubs (Fees and Financial Penalties) (Scotland) Regulations 2024
- The Tied Pubs (Scottish Arbitration Rules) Amendment Order 2024

The BRIA is attached and are also available on the Scottish Government website. The BRIA sets out the cost and benefits of various options for pub-owning businesses and tied pub tenants.

Financial penalties

The option to set financial penalties as a maximum 1% of annual turnover is the same maximum penalty that is in place for the Pubs Code in England and Wales. Scottish Ministers anticipate that the maximum penalty will only be used in cases of persistent non-compliance. A financial penalty has only been set once in England and Wales to Star Pubs & Bars which represented 0.16% of turnover (although the fine was subsequently reduced). The maximum 1% fine would have been just over £12 million. The main benefit of this approach setting the maximum penalty with reference to turnover is that businesses are proportionately impacted, taking into account their size. Financial penalties would only impact on pub-owning businesses, not tenants.

Fees

The option to set a fee for arbitration at £250 impacts mainly on tenants and creates a small cost for the tenant bringing disputes forward for arbitration. The Financial Memorandum⁹ to the Bill assumed in the first year there would be 13 arbitration cases which would reduce to 8 arbitration cases in year 3. The approach of setting fees at £250 also provides some benefit to pub-owning businesses, as it should discourage tenants from submitting minor and vexatious cases.

Scottish Government
Directorate for Agriculture and Rural Economy
May 2024

⁹ <https://www.parliament.scot/-/media/files/legislation/bills/s5-bills/tied-pubs-scotlandbill/introduced/financial-memorandum-tied-pubs-scotland-bill.pdf>

POLICY NOTE
THE SCOTTISH PUBS CODE ADJUDICATOR (MISCELLANEOUS LISTINGS)
ORDER 2024
SSI 2024/XXX

The above instrument was made in exercise of the powers conferred by section 4(1)(a) of the Freedom of Information (Scotland) Act 2002, section 15(2)(a) of the Public Services Reform (Scotland) Act 2010, section 2(2)(a) of the Public Records (Scotland) Act 2011 and all other powers enabling them to do so. The instrument is subject to affirmative procedure.

Summary Box

The Scottish Pubs Code Adjudicator is a new statutory body established by the Tied Pubs (Scotland) Act 2021.¹⁰ The Adjudicator will be appointed following a parliamentary resolution.

The purpose of this instrument is to make the Scottish Pubs Code Adjudicator subject to duties on records management and freedom of information similar to other public bodies. It also allows for Scottish Ministers to improve the Adjudicator's efficiency, effectiveness and economy under the Public Services Reform (Scotland) Act 2010.¹¹

Policy Objectives of the Act

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.

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.

Policy Objectives of the SSI

¹⁰ <https://www.legislation.gov.uk/asp/2021/17/contents>

¹¹ <https://www.legislation.gov.uk/asp/2010/8/contents>

The purpose of this instrument is to make consequential and ancillary amendments arising out of the Tied Pubs (Scotland) Act 2021 in time for the regulatory regime coming into force on 7 October 2024.

Policy officials have analysed the reporting requirements for public bodies and identified various pieces of primary legislation that the Adjudicator should be subject to as part of good governance of public bodies. This SSI, together with the Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2024, makes sure the appropriate governance arrangements are in place for the Adjudicator when the regulatory regime is created. The reason for having two SSIs, is that some of the changes to primary legislation need to be made by order and some need to be made by regulations.

Article 2 of this SSI adds the Adjudicator to the authorities listed in schedule 1 and Part 7 of the Freedom of Information (Scotland) Act 2002,¹² which makes the Adjudicator subject to the freedom of information requirements set out in that Act. Adding the Adjudicator to the freedom of information requirements will add transparency and impartiality.

Article 3 adds the Adjudicator to the public bodies listed in schedule 5 of the Public Services Reform (Scotland) Act 2010,¹³ which means the Scottish Ministers may by order make provision under Part 2 of that Act to improve efficiency, effectiveness and economy in the Adjudicator's exercise of public functions. This will help make sure the Adjudicator practices good governance and makes the best use of resources.

Article 4 adds the Adjudicator to the authorities listed in the schedule of the Public Records (Scotland) Act 2011,¹⁴ which puts the Adjudicator under a duty to comply with the records management requirements in Part 1 of that Act. Making the Adjudicator subject to this Act will make sure high standards of record keeping are maintained and kept for posterity.

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 draft laying and coming into force dates have since been changed, due to a court action brought forward by two pub-owning businesses. The Scottish Government also informally discussed the proposals with the National Records of Scotland and the Scottish Information Commissioner, both of which were supportive.

¹² <https://www.legislation.gov.uk/asp/2002/13/contents>

¹³ <https://www.legislation.gov.uk/asp/2010/8/contents>

¹⁴ <https://www.legislation.gov.uk/asp/2011/12/contents>

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 include some early thinking about:

- 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.

Impact Assessments

The following Impact Assessments have been prepared for the supporting instruments which will implement the Act:

- [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 (screening)

These impact assessments will be published on the Scottish Government website.

As this is a technical instrument there are no anticipated effects on children, environment, island communities and fairer Scotland. There are potentially privacy impacts in terms of the Adjudicator's duties as data controller under the Freedom of Information (Scotland) Act 2002 and being subject to comply with the records management requirements under the Public Records (Scotland) Act 2011. It is envisaged the Adjudicator will only collect minimal personal data, for example, data pertaining to pub-owning businesses and tied pubs tenants, for the purposes of exercising its duties. However, there are exemptions in the 2002 Act for the disclosure of personal data. The Adjudicator will need to ensure compliance with data protection law once the legislation is implemented. The Scottish Government will provide guidance from the Information Commissioner's Office to ensure privacy is respected.

Impacts on business are detailed in the financial effects section below.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed for the following SSIs:

- The Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2024; and

- Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024 (this SSI).

The BRIA is attached and is also available on the Scottish Government website. The Adjudicator will be funded initially through a loan by the Scottish Government and in the longer-term it will be funded by a levy on pub-owning businesses.

Making the Adjudicator subject to duties similar to other public bodies, such as records management and freedom of information will have some limited impact on the Scottish Government and on businesses who will fund the Adjudicator as there will be some minimal additional costs for the pub-owning businesses through levy payments. The additional cost will be on the Adjudicator's office in terms of staff time to prepare a records management scheme and to prepare and issue freedom of information requests. It is anticipated that staff appointed to the Scottish Pubs Code Adjudicator Office will be able to absorb these functions. It provides transparency to Government and pub-owning businesses that the Adjudicator has good governance and is operating effectively and transparently.

Scottish Government
Directorate for Agriculture and Rural Economy
May 2024

POLICY NOTE
THE SCOTTISH PUBS CODE ADJUDICATOR (DUTY TO PUBLISH CERTAIN
INFORMATION) REGULATIONS 2024
SSI 2024/XXX

The above instrument was made in exercise of the powers conferred by section 23 of the Tied Pubs (Scotland) Act 2021. The instrument is subject to affirmative procedure.

Summary Box

The Scottish Pubs Code Adjudicator is a new statutory body established by the Tied Pubs (Scotland) Act 2021.¹⁵ The Adjudicator will be appointed following a parliamentary resolution.

The purpose of this instrument is to make the Scottish Pubs Code Adjudicator subject to a duty to publish information under Public Services Reform (Scotland) Act 2010.¹⁶

Policy Objectives of the Act

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.

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.

Policy Objectives of the SSI

The purpose of this instrument is to make consequential amendment to the Public Services Reform (Scotland) Act 2010 using powers under the Tied Pubs (Scotland) Act 2021 in time for the regulatory regime coming into force on 7 October 2024.

¹⁵ <https://www.legislation.gov.uk/asp/2021/17/contents>

¹⁶ <https://www.legislation.gov.uk/asp/2010/8/contents>

Policy officials have analysed the reporting requirements for public bodies and identified various pieces of primary legislation that the Adjudicator should be subject to as part of good governance of public bodies. This SSI, together with the Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024, make sure the appropriate governance arrangements are in place for the Adjudicator when the regulatory regime is created. The reason for having two SSIs, is that some of the changes to primary legislation need to be made by order and some need to be made by regulations.

This SSI adds the Scottish Pubs Code Adjudicator to the public bodies listed in schedule 8 of the Public Services Reform (Scotland) Act 2010. This makes the Scottish Pubs Code Adjudicator subject to duties under Part 3 of that Act¹⁷ to publish information about certain types of expenditure and the exercise of functions.

Inclusion in schedule 8 would create a duty on organisations to publish an annual statement on expenditure incurred on public relations, hospitality and entertainment, overseas travel and external consultancy, as well as any payments over £25,000 (other than service-related payments to members/staff) and the number of members/staff who received more than £150,000 in remuneration during the financial year. It would also require the Adjudicator to publish information on what steps it has taken to promote and increase sustainable growth and to improve efficiency, effectiveness and economy.

Ultimately this SSI will help ensure that the Scottish Pubs Code Adjudicator practices good governance and making the best use of its financial resources. The Adjudicator will be funded initially through a loan by the Scottish Government and in the longer-term it will be funded by a levy on pub-owning businesses.

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 draft laying and coming into force dates have since been changed, due to a court action brought forward by two pub-owning businesses. The Scottish Government also informally discussed the proposals with the National Records of Scotland and the Scottish Information Commissioner, both of which were supportive.

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.

¹⁷ <https://www.legislation.gov.uk/asp/2010/8/part/3>

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 include some early thinking about:

- 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.

Impact Assessments

The following Impact Assessments have been prepared for the supporting instruments which will implement the Act:

- [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 (screening)

These impact assessments will be published on the Scottish Government website.

As this is a technical instrument no effects on equality, children, environment, island communities and fairer Scotland are anticipated. There is potentially a privacy impact in terms of publishing information on remuneration. However, the Adjudicator will need to ensure compliance with data protection law once the legislation is implemented. The Scottish Government will provide guidance from the Information Commissioner's Office to ensure privacy is respected. Impacts on business are detailed in the financial effects section below.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed for the following SSIs:

- The Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2024 (this SSI); and
- Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024.

The BRIA is attached and is also available on the Scottish Government website. The Adjudicator will be funded initially through a loan by the Scottish Government and in the longer-term it will be funded by a levy on pub-owning businesses.

Creating requirements on the Adjudicator through this SSI will have some limited impact on the Scottish Government and on businesses funding the Adjudicator, as there will be some minimal additional costs for the pub-owning businesses through levy payments. The additional cost will involve the administration and publication of an annual statement on expenditure, staff remuneration and information on steps the

EFW/S6/24/18/1

Adjudicator has taken to promote and increase sustainable growth and to improve efficiency, effectiveness and economy. It is anticipated that staff appointed to the Scottish Pubs Code Adjudicator Office will be able to absorb these functions. It provides transparency to Government and pub- owning businesses that the Adjudicator is operating effectively and transparency.

Scottish Government
Directorate for Agriculture and Rural Economy
May 2024

POLICY NOTE
THE TIED PUBS (SCOTTISH ARBITRATION RULES) AMENDMENT ORDER
2024
SSI 2024/XXX

The above instrument was made in exercise of the powers conferred by 17(b) of the Arbitration (Scotland) Act 2010. This instrument is laid in the Scottish Parliament in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010. The instrument is subject to the affirmative procedure.

Summary Box

The Tied Pubs (Scotland) Act 2021 requires the creation of a statutory Scottish Pubs Code and the appointment of a Scottish Pubs Code Adjudicator to oversee and enforce the code.

The purpose of this instrument is to allow the Adjudicator to apply the Scottish Arbitration Rules when arbitrating in disputes between tied pub tenants and pub-owning businesses.

Policy Objectives

The Tied Pubs (Scotland) Act 2021¹⁸ (“the Act”) received Royal Assent in May 2021. 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. The Adjudicator, or an arbitrator appointed on their behalf, will arbitrate in disputes between tenants and their landlords about whether a pub-owning business has complied with the code.

The Act requires arbitrations to be carried out in accordance with the rules of either the Chartered Institute of Arbitrators (CIArb) or any other dispute resolution body. The CIArb is a not-for-profit UK registered charity recognised internationally as a centre of excellence for alternative dispute resolution. Their rules are used throughout the UK.

The purpose of this instrument is to allow the Adjudicator to have the choice to apply and use the Scottish Arbitration Rules, if they so wish, to arbitrations brought under the code. The Adjudicator would be required to apply the rules consistently to all arbitrations if chosen.

The Scottish Arbitration Rules are modern rules and processes for dealing with arbitrations, governed by the law in Scotland and were established in the Arbitration (Scotland) Act 2010. The Arbitration (Scotland) Act 2010 is not yet commenced for the purposes of statutory arbitrations, but powers are available for the Scottish Government to treat the Act as commenced for the purposes of arbitrations under the Tied Pubs Act.

¹⁸ <https://www.legislation.gov.uk/asp/2021/17/contents/enacted>

The ability to apply the Scottish Arbitration Rules (SARs) would mean that Scottish legislation could be relied on, where appropriate, to support arbitrations under the Tied Pubs (Scotland) Act 2021. The application of SARs ensures that the forum for the arbitration is in Scotland and that any appeals are dealt with by the Scottish courts. It would also provide the Adjudicator with flexibility and discretion to identify the most appropriate rules for tied pubs arbitrations.

Alongside these regulations, the Scottish Ministers are laying the following SSIs to implement the Act:

- The Scottish Pubs Code Regulations 2024;
- The Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024;
- The Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2024;
- The Tied Pubs (Fees and Financial Penalties) (Scotland) Regulations 2024;
- Tied Pubs (Scotland) Act 2021 (Commencement No. 2) Regulations 2024.

If these instruments are approved, the intention is for most of these to come into force at the same time on 7 October 2024, with the commencement regulations coming into force earlier on 24 June 2024.

EU Alignment Consideration

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

Consultation

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.

A full list of those consulted and who agreed to the release of this information is available on the Scottish Government's website.

A short, focused and closed consultation on arbitration rules ran between 17 May and 7 June 2022. Six responses were received. At that time, we had thought we could use the SARs alongside other arbitration rules, but this is not a viable option under the Tied Pubs (Scotland) Act 2021. Two respondents strongly agreed, and one tended to agree, with the proposal to use the SARs alongside other rules, and the remainder did not comment. Observations by respondents pointed to the clarity and accessibility of the SARs, compared to the pre-2010 regime, and a request for the Adjudicator to specify which SARs will be mandatory for all arbitrations and which are optional. One response thought that allowing the arbitration to be conducted under the rules of CI Arb or another dispute resolution body is likely to cause confusion amongst parties, however this is not a valid option.

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 include some early thinking about:

- 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.

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 (screening)

These impact assessments will be published on the Scottish Government website.

As this instrument is simply increasing the choice of arbitration rules that a dispute can be arbitrated under, no direct effects on equality, children, environment, island communities or Fairer Scotland are anticipated.

It may indirectly support equality and Fairer Scotland, as the SARs place fairness and impartiality as the standards by which disputes are to be resolved by arbitration. In general, successful implementation of the Act would mean that tenant and pub-owning business relationships are fairer and more balanced, which should minimise discrimination on any basis, protected characteristic or otherwise.

The SARs may also maintain data protection requirements as rule 26 provides that the arbitrator and the parties must not disclose some confidential information unless this is provided for.

Impacts on business are detailed in the financial effects section below.

Financial Effects

The BRIA is attached and is also available on the Scottish Government website. The BRIA sets out the cost and benefits of various options for pub-owning businesses and tied pub tenants.

The addition of modern, accessible Scottish Arbitration Rules for the Adjudicator to choose and use to arbitrations brought under the code, is not expected to lead to any additional costs for any of the parties involved in disputes.

Scottish Government
Directorate for Agriculture and Rural Economy
May 2024

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(sent by email)

Our ref: Secondary legislation to implement the Tied Pubs (Scotland) Act 2021

30 May 2024

Dear Claire,

Many thanks to you and the Committee for agreeing to consider these regulations on 5 June, rather than on the planned date of 29 May.

I have heard concerns from the sector about the Scottish Pubs Code and I want to consider these concerns fully. I have therefore decided to undertake a short, focused and targeted consultation about how the Scottish Pubs Code could be amended.

The Tied Pubs (Scotland) Act 2021 contains a legal requirement for Scottish Ministers to lay the code by a certain date. That date could not be met due to the judicial review of the Act, but the legal requirement remains and requires me to lay the code as soon as reasonably practicable. This means I cannot withdraw the SSI and therefore I will be asking the Committee to approve the package of SSIs on 5 June.

I will however be bringing forward an amending SSI for laying on 7 June. This will address the points made by the Delegated Powers and Law Reform Committee, but importantly it will extend the coming into force date of the Scottish Pubs Code into 2025. Extending the coming into force date will create time and space for further dialogue and targeted consultation to take place with the sector. I will then bring forward a further SSI making amendments to the Scottish Pubs Code. Any amendments will take place ahead of the code going live. My officials will write to you with a full timetable in due course.

I will keep your Committee up to date with progress.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Sincerely,



TOM ARTHUR MSP

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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