

Equality Impact Assessment

Title of policy

Implementation of the Tied Pubs (Scotland) Act 2021.

Summary of aims and desired outcomes of policy

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.

Directorate: Agriculture and Rural Economy

Division: Food and Drink Division

Team: Food and Drink Industry Growth

Executive summary

The Tied Pubs (Scotland) Act 2021¹ (“the Act”) received Royal Assent in May 2021. The purpose of the Act is to regulate the relationship between tied pub landlords (pub-owning businesses) and tenants through the introduction of a statutory Scottish Pubs Code and the appointment of a Scottish Pubs Code Adjudicator. –

¹ [Tied Pubs \(Scotland\) Act 2021 \(legislation.gov.uk\)](https://legislation.gov.uk)

This Equality Impact Assessment (EqIA) has been developed to inform the implementation of the Tied Pubs (Scotland) Act 2021, its secondary legislation and the creation of a Scottish Pubs Code Adjudicator.

In developing this policy the Scottish Government is mindful of the three needs of the Public Sector Equality Duty (PSED) – eliminate unlawful discrimination, harassment and victimisation; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not. Where any negative impacts have been identified, we have sought to mitigate/eliminate these. We are also mindful that the equality duty is not just about negating or mitigating negative impacts, as we also have a positive duty to promote equality.

The assessment found that the policy did not impact on people due to protected characteristics, such as age and sex. Based on the evidence gathered and the analysis conducted as part of this EqIA, the policy is not directly or indirectly discriminatory.

Background

The Scottish Pubs Code will cover arrangements such as the process for tenants to request a Market Rent Only (MRO) lease (removing all service or product ties), circumstances where a MRO lease cannot be offered, guest beer agreements (where a tenant can select and stock one beer of its choosing), financial penalties for non-compliance with the code, information requirements on pub-owning businesses and it can also place other requirements on pub-owning businesses.

The Act also requires Scottish Ministers to appoint a Scottish Pubs Code Adjudicator to apply and enforce the code, including arbitrating in disputes about non-compliance between tenant and the pub-owning business.

The Scope of the EQIA

This EqIA covers both the secondary legislation required to implement the Tied Pubs (Scotland) Act 2021 and the set up of the Scottish Pubs Code Adjudicator.

This EqIA will need to be revisited as policy and implementation continues, to ensure that equality is safeguarded and the Scottish Government meets its Public Sector Equality Duty. We have revisited the EqIA in 2023 and 2024 due to delays in implementing the Tied Pubs (Scotland) Act 2021. The delays were as a result of a court action brought forward by initially three then two pub-owning businesses.

The EqIA draws upon a range of sources, from industry information to survey reports to consultation responses.

Key Findings

The screening exercise considered issues relating to gender reassignment, sexual orientation, pregnancy/maternity, marriage/civil partnership and religious belief. For all of these characteristics, it was assessed that implementing the Act would have no impact.

In general, successful implementation of the Act would mean that tenant and pub-owning business relationships are fairer, which should minimise discrimination on any basis, protected characteristic or otherwise.

In the case of age, disability, gender and race, it was identified that the EqIA needed to explore the make-up of these groups in the tied pub sector in Scotland (if possible) and also the sector in England and Wales, and whether there had been any positive or negative impacts to these groups through the creation of the pubs code and the Pubs Code Adjudicator in England and Wales.

On age, it was identified that there was a need for the Adjudicator to provide an inclusive service. For example, by having a telephone and post contact point, to assist older tenants and those without broadband, although it was recognised that a

majority of people have internet access². One stakeholder had suggested that the policy could potentially particularly impact on young people accessing the tied pubs sector, if the impact of implementation of the Act results in fewer tied pubs. The evidence from England and Wales, including from the most recent 2023 survey of tied pub tenants³, suggests that the implementation of the Pubs Code has not resulted in a lower proportion of young people within the tied pubs sector compared to 2019⁴.

On disability, in a 2022 survey of tied pub tenants⁵ in England and Wales, respondents who said they were disabled were slightly less aware of the Pubs Code Adjudicator and were likely to be less satisfied with their relationship with the pub-owning business. However, there was no difference in the proportion of respondents requesting a Market Rent Only lease amongst those who said they were disabled and those who said they were not. It is not possible to compare tenants satisfaction with their pub-owning business relationship before the Pubs Code in England and Wales was established and what the demographics of the sector were pre-code, as the data is not available.

On sex, in the 2022 survey of tied pub tenants⁶ in England and Wales there were no significant differences in satisfaction with the pub-owning business between men and women surveyed. There was also no difference in how likely each group contacted the Pubs Code Adjudicator in the past two years, potentially suggesting that women are no more or less likely to raise issues about the relationship with the pub-owning business compared to men.

² [4. Internet - Scottish Household Survey 2021 - telephone survey: key findings - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-household-survey-2021/sections/4-internet-usage/pages/4-1-telephone-survey-key-findings.aspx)

³ [PCA Annual Tied Tenant Survey 2023: results published - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/pca-annual-tied-tenant-survey-2023)

⁴ [PCA Annual Tied Tenant Survey 2023: results published - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/pca-annual-tied-tenant-survey-2023)

⁵ [PCA Annual Tied Tenant Survey 2022 results - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/pca-annual-tied-tenant-survey-2022)

⁶ [PCA Annual Tied Tenant Survey 2022 results - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/pca-annual-tied-tenant-survey-2022)

On race, the 2022 survey of tied pub tenants⁷ in England and Wales showed 98% were from a white ethnic group and 1% were from a minority ethnic group and in the 2023 survey of tied pub tenants⁸ in England and Wales, 95% were from a white ethnic group and 2% were from a minority ethnic group. There is no written analysis published about whether an individual's ethnicity impacted on their experience of the code.

In the main it was clear that we do not have sufficient evidence on the demographics of the tied pub tenants in Scotland.

Recommendations and Conclusion

The EqIA has not identified any positive or negative substantial impacts on equality. However, this is based mostly on weak evidence from surveys in England and Wales, and the EqIA has identified considerable data gaps regarding the demographics of the Tied Pubs sector in Scotland. We have tried to capture this by working with representative organisations, but it was not possible to access this due to a low response by tenants to a representative organisation's survey.

The issue of data gaps shall be raised with the Scottish Pubs Code Adjudicator. We will ask the Adjudicator to consider equality considerations in its communications and engagement with the sector, for example by making its website accessible and ensuring that there are different ways for tenants and pub-owning businesses to communicate such as telephone and post.

In general, successful implementation of the Act would mean that the position of tied pub tenants is improved and there is a fairer tied pub sector in terms of the share of risk and reward between tenants and pub-owning businesses. This should minimise discrimination on any basis, protected characteristic or otherwise.

⁷ [PCA Annual Tied Tenant Survey 2022 results - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/pca-annual-tied-tenant-survey-2022-results)

⁸ [PCA Annual Tied Tenant Survey 2023: results published - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/pca-annual-tied-tenant-survey-2023-results)

Scottish Ministers are required to review the Scottish Pubs Code and the performance of the Adjudicator over the first two years of operation and then at three yearly intervals thereafter. Consideration of equality issues will form part of this review.