

POLICY NOTE

THE TIED PUBS (SCOTLAND) ACT 2021 (COMMENCEMENT NO. 2) REGULATIONS 2024

SSI 2024/136 (C. 12)

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 purpose of this instrument is to commence fully the Tied Pubs (Scotland) Act 2021. It will commence sections 1, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18 and 19 and Schedule 1. Earlier commencement regulations were laid to allow the Scottish Pubs Code Adjudicator, established under the Act, to be appointed.

Policy Objectives

The Tied Pubs (Scotland) Act 2021 (“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.

Some parts of the Act have already been commenced. The purpose of this instrument is to commence the remaining parts of the Act, creating a comprehensive regulatory framework for tied pubs and fulfilling the regulatory principles set out in the Act. Commencing the remaining provisions will allow, amongst other things, Ministers to issue guidance to the Adjudicator and for the Adjudicator to arbitrate between tenants and pub-owning businesses on matters of the code.

Alongside the commencement 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;
- The Tied Pubs (Scottish Arbitration Rules) Amendment Order 2024

If these instruments are approved, the intention is for these to come into force on 7 October 2024. These commencement regulations will come into force 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

The policy objectives of the Act¹ were subject to parliamentary scrutiny as a part of the legislative process. The Policy Memorandum² for the Bill that preceded the Act outlined the consultation undertaken on the proposals. As these Regulations only bring into force provisions of the Act, no further consultation has been carried out in relation to this instrument.

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.

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.

These points relate to the other implementation SSIs, which have been laid as a package.

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.

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

² <https://www.parliament.scot/-/media/files/legislation/bills/s5-bills/tied-pubs-scotland-bill/introduced/policy-memorandum-tied-pubs-scotland-bill.pdf>

As this is a technical instrument, no effects on equality, children, privacy, environment, island communities or Fairer Scotland are anticipated, and no specific Impact Assessments have been prepared solely 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 Memorandum³ which accompanied the Bill for the 2021 Act. In addition, two Business and Regulatory Impact Assessments (BRIAs) have been produced for the SSIs that will implement the Act, and therefore will have financial effects for business and government. These BRIAs will be published alongside the SSIs.

Scottish Government
Directorate for Agriculture and Rural Economy

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³ <https://www.parliament.scot/-/media/files/legislation/bills/s5-bills/tied-pubs-scotland-bill/introduced/financial-memorandum-tied-pubs-scotland-bill.pdf>