

**Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2024 and Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024**

**Business and Regulatory Impact Assessment**

## **Title of Proposal**

Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2024 and Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024

## **Purpose and intended effect**

### **Background**

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 (pub-owning businesses) 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 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 or someone nominated by the pub-owning business (“the tie”). Ties can include, for example, beer and spirits, and tied products and services are often charged at a higher cost than on the open market. In return, tenants sometimes pay lower rent than the market rate and receive other support from the pub-owning business.

Concerns about fairness in this relationship led to the UK Government creating a Pubs Code and a Pubs Code Adjudicator for tied pubs in England and Wales in 2016. The legislation in England and Wales applies to pub-owning businesses owning 500 tied pubs or more.

Similar concerns about fairness were raised in Scotland despite a Scottish voluntary code of practice being in place and signed up to by a majority of pub-owning businesses. In 2020, the Tied Pubs (Scotland) Bill (“the Bill”) was introduced by Neil Bibby MSP as a Member’s Bill.

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 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 and became an Act on 5 May 2021.

The Act covers all tied pubs and pub-owning businesses in Scotland, reflecting the smaller scale of the tied pubs sector in Scotland compared to England and Wales. As of May 2023, it is estimated there were just under 700 tied pubs<sup>1</sup> in Scotland and

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<sup>1</sup> This estimate is based on a partial return from Scottish Beer and Pub Association members in May 2023 and applies a 7% reduction to the number of tied pubs since 2019 (2019 figure from [Policy Memorandum](#) to the Tied Pubs (Scotland) Act 2021), which mirrors the reduction in the number of all pubs in Scotland between 2019 and 2023, based on ONS UK Business Count number of local units and using industry code 56.302 Public houses and bars via NOMIS.

at least 10 pub-owning businesses<sup>2</sup>. Based on estimates and industry data, tied pubs represent 16% of Scotland's total licensed premises<sup>3</sup>.

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.

Implementation of the Act was due to be completed by 6 May 2023, but this was delayed because of legal challenge to the Act brought by some pub-owning businesses by way of judicial review. The challenge was on the basis that the Act was not within the legislative competence of the Scottish Parliament. Alongside the legal challenge, the pub-owning business successfully sought an interim interdict order preventing the Scottish Ministers from making or laying any part of the Act. Lord Harrower's [Opinion](#) was published on 9 December 2022 and found that the Act was within competence. This judgement was subject to appeal, which was refused by the [Inner House of the Court of Session](#) on 7 July 2023. A further request to appeal to the UK Supreme Court was also refused by the Inner House on 14 November 2023. On the 8 March 2024, the UK Supreme Court refused a request for permission to appeal, thereby allowing these regulations to be laid before the Scottish Parliament.

This Business and Regulatory Impact Assessment covers the Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2024 and the Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024.

## Objective

The Scottish Pubs Code Adjudicator is a new statutory body established by the [Tied Pubs \(Scotland\) Act 2021](#). The Adjudicator will be appointed following a parliamentary resolution.

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

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<sup>2</sup> Estimate based on pub-owning businesses who responded to the Scottish pubs code consultation, returns from the Scottish Pub and Beer Association and the list of pub-owning businesses mentioned [Policy Memorandum](#) to the Tied Pubs (Scotland) Act 2021.

<sup>3</sup> As of 2023, there were 4,380 Scottish licenced premises based on figures from the British Beer and Pub Association. The differences between ONS and BBPA/SBPA data is understood to be due to a difference in terminology, i.e. the BBPA/SBPA having a broader definition of what constitutes a pub which includes some hotels (pubs with rooms), inns and restaurants.

The purpose of the Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2024 is to make the Adjudicator subject to a duty to publish information under the [Public Services Reform \(Scotland\) Act 2010](#). The SSI adds the Adjudicator to the public bodies listed in schedule 8 of the Public Services Reform (Scotland) Act 2010 in time for the regulatory regime coming into force on 7 October 2024. Inclusion in schedule 8 creates 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 will also require the Adjudicator to publish information on what steps they have taken to promote and increase sustainable growth and to improve efficiency, effectiveness and economy.

The purpose of the Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024 is to make the Adjudicator subject to duties on records management and on freedom of information similar to other public bodies. The Order makes the Adjudicator subject to the freedom of information requirements set out in the Freedom of Information (Scotland) Act 2002 and places a duty on the Adjudicator to comply with the records management requirements of the Public Records (Scotland) Act 2011. It also allows for Scottish Ministers to improve the Adjudicator's efficiency, effectiveness and economy under the [Public Services Reform \(Scotland\) Act 2010](#).

The SSIs will support delivery of the Tied Pubs (Scotland) Act 2021. They will help ensure that, in line with other public bodies, the Adjudicator is transparent, practises good governance and record keeping, and makes the best use of their financial resources. 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.

### **Rationale for Government Intervention**

The [Policy Memorandum](#) for the Bill stated that with the establishment of a tied pubs code and adjudicator for England and Wales, tied pub tenants in Scotland did not have equivalent statutory rights and protections to their counterparts in England and Wales. The Memorandum stated that this also meant that pub-owning businesses which operated in Scotland as well as England and Wales were operating in very different statutory environments north and south of the border. The Bill would therefore help to ensure that tied pub tenants in Scotland were no worse off than their colleagues in England and Wales.

During the final debate on the Bill on 23 March 2021, the Minister for Business, Fair Work and Skills noted that the legislation would promote fair and equitable treatment in commercial agreements and would rebalance the relationship between pub-owning businesses and tied pub tenants.

The Minister had listened carefully to views and concerns from across the industry. He had heard about the support provided to many tenants by their pub-owning businesses, especially during Covid, which showed the value of the tied pubs model. Tied pubs also provided a low-cost entry point for people looking to take their first steps into business. However, the Minister noted that the picture across the sector

was not uniform and said, “I have also heard from some tenants that they have not had that level of support and believe that change is required.”<sup>4</sup>

The Minister confirmed that “whether we would support the Bill’s progress was a balanced decision”<sup>5</sup> and Ministers had “sought to ensure that the Bill is fair and balanced for both landlords and tenants”<sup>6</sup>. He wanted “to preserve the benefits of the tied pubs system” but also “to ensure that there is a better balance in landlord-tenant relationships, and a proportionate approach”<sup>7</sup>. He said that he wanted “a level playing field for tenants and landlords. I want tenants to be treated fairly and landlords to be able to see a return for their investment”<sup>8</sup>.

The Act went further than the legislation in England and Wales by introducing the right for all tenants to request an Market Rent Only (MRO) lease at any time, except in specified circumstances, to make the MRO process less complex. The Act assumes that an MRO lease will be made through a deed of variation, rather than through a new lease, unless the tenant consents to a new lease. The other key difference with England and Wales is that the Act requires the Scottish Pubs Code to include a guest beer agreement, which is the ability for a tenant to request a beer of their choice from any supplier. There is no guest beer agreement within the English and Welsh code. Neil Bibby MSP, in evidence to the Economy, Energy and Fair Work Committee 01 September 2020, said that the “guest beer right is about giving publicans the opportunity to stock more beers and to stock the beers that they want to stock. It will also allow consumers the opportunity to demand more choice at the bar.”<sup>9</sup>. Allowing tenants more autonomy could potentially increase profits for certain tenants and potentially support smaller brewers, bolstering the wider community of tied pubs.

Section 2 of the Act establishes the office of the Scottish Pubs Code Adjudicator and Schedule 2 makes provision about that office. Ahead of the regulatory regime being established, 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.

The regulations that are the subject of this impact assessment will support the implementation of the Act and contribute to our economic national outcomes, particularly towards the vision to “ensure the benefits of economic growth, wealth and opportunities are fairly shared”<sup>10</sup>.

The Adjudicator is a public appointment, and they will be funded initially through a loan by the Scottish Government and in the longer-term by a levy on pub-owning businesses. Ministers have a responsibility to ensure good governance, transparency and financial propriety. The regulations and order will help to support these aims.

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<sup>4</sup> [Meeting of the Parliament: 23/03/2021 | Scottish Parliament Website](#)

<sup>5</sup> [Meeting of the Parliament: 23/03/2021 | Scottish Parliament Website](#)

<sup>6</sup> [Meeting of the Parliament: 23/03/2021 | Scottish Parliament Website](#)

<sup>7</sup> [Meeting of the Parliament: 23/03/2021 | Scottish Parliament Website](#)

<sup>8</sup> [Meeting of the Parliament: 23/03/2021 | Scottish Parliament Website](#)

<sup>9</sup> [Official Report - Parliamentary Business : Scottish Parliament](#)

<sup>10</sup> [About the National Outcome | National Performance Framework](#)

## **Consultation**

### **Within Government**

The following Scottish Government Directorates have been involved in the development of the regulations:

- Directorate for Agriculture and Rural Economy
- Directorate for Constitution
- Directorate for Chief Economist
- Directorate for Energy and Climate Change
- Directorate for Equality, Inclusion and Human Rights
- Directorate for Local Government and Communities
- Directorate for Legal Services (Solicitor to the Scottish Government)
- Scottish Procurement and Property Directorate

This dialogue has contributed to policy development. For example, officials considered whether the Adjudicator needed to be added to the Scottish procurement legislation, however following discussion it was identified that the Adjudicator would be classed as a contracting authority, so no changes were needed to public procurement legislation – they were already covered by the legislation.

We have also discussed the proposals with the National Records of Scotland and the Scottish Freedom of Information Commissioner.

### **Public Consultation**

Given the technical nature of this instrument a formal consultation exercise was not undertaken. An informal and short 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 initially three and then 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 of the proposals.

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;

## **Business**

As noted above, we have not undertaken a formal consultation on the two instruments due to their technical nature. However, we have shared the drafts with key representative organisations, i.e. the SLTA and the SBPA. Businesses have taken part in the public consultations and workshops on the wider Scottish Pubs Code and corresponding fees and financial penalties regulations.

## **Options**

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

#### **Option 1 – Do nothing**

Under this option, the Adjudicator would not be required by statute to publish information about certain types of expenditure and the exercise of functions required under the Public Services Reform (Scotland) Act 2010. The types of expenditure include, but are not limited to, public relations, overseas travel, hospitality and entertainment, and external consultancy. They could nevertheless make the information available voluntarily. They would still be obligated to keep proper accounts and accounting records, amongst other audit duties, under the Tied Pubs (Scotland) Act 2021.

#### **Option 2 – Require the Adjudicator to publish information about certain types of expenditure and the exercise of functions**

Under this option, the Adjudicator would be subject to a duty to publish information under the [Public Services Reform \(Scotland\) Act 2010](#). The SSI adds the Adjudicator to the public bodies listed in schedule 8 of the Public Services Reform (Scotland) Act 2010. This makes the Adjudicator subject to duties under [Part 3 of that Act](#) to publish information about certain types of expenditure and the exercise of functions. The types of expenditure include, but are not limited to, public relations, overseas travel, hospitality and entertainment, and external consultancy. This would be an additional legal requirement distinct from the Adjudicator's accounts and auditing duties under section 17 of the Tied Pubs (Scotland) Act 2021.

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

## **Option 1 – Do nothing**

Under this option, the Adjudicator would not be subject to duties on records management and freedom of information under the Freedom of Information (Scotland) Act 2002. They could nevertheless keep records and make information available in the same way as other public bodies, but voluntarily.

## **Option 2 - Make the Adjudicator subject to duties on records management and freedom of information similar to other public bodies**

Under this option, the Adjudicator is subject to the freedom of information requirements set out in the Freedom of Information (Scotland) Act 2002 and would need to comply with the records management requirements of the Public Records (Scotland) Act 2011. This ensures transparency and impartiality of the Adjudicator. The option allows for Scottish Ministers to improve the Adjudicator's efficiency, effectiveness and economy under the [Public Services Reform \(Scotland\) Act 2010](#).

In England and Wales the Pubs Code Adjudicator is subject to freedom of information (FOI) requests. [FOIs](#) in 2023 related to matters such as IT, annual spend, use of contractors, communication channels and invoices not paid within 30 days.

## **Sectors and Groups Affected**

The policies will primarily affect tied pub tenants and pub-owning businesses (landlords). There will be no impacts on other stakeholders such as customers, beer producers or surveyors. There will be no impact on local authorities or organisations in the third sector.

As mentioned earlier, public bodies such as the National Records of Scotland and the Scottish Freedom of Information Commissioner are aware of the plans.

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

### **Impact on tenants**

**Option 1 – Do nothing** – there would be no discernible impact on tenants and no costs, as the required information provided under this duty relates to the expenditure of the Adjudicator office.

**Option 2 – Require Adjudicator to publish information about certain types of expenditure and the exercise of functions** – tenants, who will need to pay a fee to use the Adjudicator's arbitration service, would be able to see greater detail on the expenditure and exercise of functions by the Adjudicator than would be likely under a voluntary disclosure scheme.

### **Impact on pub-owning businesses**



**Option 1 – Do nothing** – there would be no additional requirements on the pub-owning businesses, as the required information provided under this duty relates to the expenditure of the Adjudicator office.

**Option 2 – Require Adjudicator to publish information about certain types of expenditure and the exercise of functions** – this instrument would ensure good governance, openness and transparency by the Adjudicator with pub-owning businesses. Given that the Adjudicator and their office costs will, in time, be met by an industry levy, there could be some minimal additional costs for the pub-owning businesses as a result of the requirement to publish information in accordance with Part 3 of the Public Service Reform (Scotland) Act 2010. This requirement may also pre-empt freedom of information requests into the office of the Scottish Pubs Code Adjudicator’s expenditure because the information will be publicly available.

Businesses would benefit from assurance that the Adjudicator is operating efficiently and effectively, and with transparency, as a result of this instrument.

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

### **Impact on tenants**

**Option 1 – Do nothing** – there would be no real impact or costs for tenants surrounding the option.

**Option 2 - Make the Adjudicator subject to duties on records management and freedom of information similar to other public bodies** – as with others, tenants would be able to request information from the Adjudicator under the terms of the Freedom of Information (Scotland) Act 2010. There would be little impact and no costs involved for tenants.

### **Impact on pub-owning businesses**

**Option 1 – Do nothing** – there would be no additional requirements on the Adjudicator and no impact on pub-owning businesses.

**Option 2 - Make the Adjudicator subject to duties on records management and freedom of information similar to other public bodies** – this instrument ensures good governance, openness and transparency by the Adjudicator. Since Adjudicator costs will, in time, be met by an industry levy, there may be some additional costs for the pub-owning businesses as a result of the duties introduced by the instrument around records management and freedom of information. However, if the cost of providing a response to an individual Freedom of Information Request exceeds £100 the Adjudicator could decide to place a [charge](#), which will recoup a portion of the cost. Businesses will benefit, however, from assurance that the Adjudicator is operating efficiently and effectively, and with transparency.

## **Benefits and Costs**

## **The Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2023**

### **Option 1 – Do nothing**

Potentially, this option would place less of an administrative burden on the Adjudicator, but they may make the information publicly available voluntarily, as a matter of good practice. Costs are likely to be minimal regardless of whether the requirement is statutory.

### **Option 2 – Require Adjudicator to publish information about certain types of expenditure and the exercise of functions**

This option would ensure good governance, openness and transparency by the Adjudicator. Businesses would benefit from assurance that the Adjudicator is operating efficiently and effectively, and with transparency and this would be particularly valuable for pub-owning businesses that will pay a levy in the future to fund the Adjudicator role.

The Scottish Land Commission is subject to the same requirements and the publication costs are carried out in-house so there are no additional costs other than staff time. The requirements could also be published as part of the Annual Report and Accounts, which the Act requires the Adjudicator to prepare. Printing, postage and stationary costs involved in producing the Annual Report for the English and Welsh [Pubs Code Adjudicator](#) in 2022-23 were £7,713 so we could expect any publication costs in Scotland to be similar. There would be administrative costs beyond this but again these are not likely to be significant.

## **The Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2023**

### **Option 1 – Do nothing**

This option would place less of an administrative burden on the Adjudicator, but they will be expected to manage records appropriately and may make information available, voluntarily, as a matter of good practice. Costs are not likely to be significant regardless of whether record keeping, and information management requirements are set out in statute.

### **Option 2 - Make the Adjudicator subject to duties on records management and freedom of information similar to other public bodies**

This option would ensure good governance, openness and transparency by the Adjudicator. Since Adjudicator costs will, in time, be met by an industry levy, there may be some additional costs for the pub-owning businesses as a result of the duties introduced by the instrument around records management and freedom of information. Businesses will benefit from assurance that the Adjudicator is operating efficiently and effectively, and with transparency. It may provide further trust to both tenants and pub-owning businesses in the regulatory regime if they are able to ask for and receive information.

Costs are not likely to be significant. As an example, the Pubs Code Adjudicator in England and Wales in 2023 dealt with 7 Freedom of Information cases and in 2022 dealt with 4 [cases](#)<sup>11</sup>. The Freedom of Information (Scotland) Act 2000 also provides exemptions where the public authority can refuse requests e.g. if it will cost over £600 to provide the information or if they think the request is vexatious<sup>12</sup>, which should reduce the administrative impact.

## **Regulatory and EU Alignment Impacts**

### **Intra-UK Trade**

This policy is not expected to impact on intra-UK trade. A Pubs Code and a Pubs Code Adjudicator already exist in England and Wales and although the schemes are not identical north and south of the border, the Tied Pubs (Scotland) Act 2021 and the related secondary legislation brings the tied pubs sector in Scotland more into line with its counterparts in England and Wales. Smaller pub-owning businesses in Scotland will likely need to contribute proportionately to the running of the Scottish Pubs Code Adjudicator through a levy. This differs from the situation in England and Wales where the levy is placed only on pub-owning businesses that have 500 or more tied pubs.

### **International Trade**

This policy will impact on the relationship between tied pub tenants and pub-owning businesses. It is not expected to impact on international trade and investment or to affect imports or exports, trade flows or international standards.

### **EU Alignment**

This policy is not expected to impact on the Scottish Government's policy to maintain alignment with the EU. It does not reduce standards or impede access to EU markets.

## **Scottish Firms Impact Test**

Given the technical nature of these instruments, there was no face-to-face discussion with businesses. Informal written consultation took place with trade bodies in 2023, specifically the SLTA and the SBPA on the draft regulations and order. The former confirmed that they were content with the drafts and no reply was received from the latter.

We have not been able to meet with stakeholders individually on this due to the court case which only recently concluded.

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<sup>11</sup> [Pubs Code Adjudicator FOI responses 2022 - GOV.UK \(www.gov.uk\)](#) and [Pubs Code Adjudicator FOI responses 2023 - GOV.UK \(www.gov.uk\)](#)

<sup>12</sup> [Why might my request be refused? | Scottish Information Commissioner \(itspublicknowledge.info\)](#)

## Competition Assessment

The policy concerns the statutory sharing, publication and recording of information by the Adjudicator and will not have a direct impact on competition.

The creation of a statutory framework regulating pub-owning businesses' relationships with tenants may change the tied-pub market indirectly. The introduction of a levy for pub-owning businesses could also act as a barrier to new potential pub-owning businesses, increasing the barriers to entry and potentially reducing competition.

Responses to the four Competition and Market Authority (CMA) assessment questions used to provide an initial assessment of competition are as follows:

### **1. Will the measures directly or indirectly limit the number or range of suppliers?**

The measures in themselves are small and they relate to the sharing, publication and recording of information by the Adjudicator. The levy on pub-owning businesses will be introduced regardless of these measures, although these measures could slightly increase the cost of the levy.

**Option 1 for both SSIs** is the status quo and would have no competition effect. **Option 2 for both SSIs** could slightly increase the cost of the levy and may indirectly reduce competition if the additional levy costs cause pub-owning businesses to exit the market.

### **2. Will the measures limit the ability of suppliers to compete?**

The situation is as described above under Question 1.

### **3. Will the measure limit suppliers' incentives to compete vigorously?**

The situation is as described above under Question 1.

### **4. Will the measure limit the choices and information available to consumers?**

The policy is expected to increase information available for consumers. An in-depth competition impact assessment has been considered but is not required.

## Consumer Assessment

The policy concerns the statutory sharing, publication and recording of information by the Adjudicator but not with regard to consumers. It will not have a direct impact on consumers.

**1. Does the policy affect the quality, availability or price of any goods or services in a market?**

The policy to add statutory requirements to the Adjudicator around sharing, publication and recording of information would not negatively impact on consumers. These measures could increase marginally the cost of the levy on pub-owning businesses, since pub-owning businesses may choose to pass additional costs onto their tied pub tenants.

**2. Does the policy affect the essential services market, such as energy or water?**

No

**3. Does the policy involve storage or increased use of consumer data?**

No

**4. Does the policy increase opportunities for unscrupulous suppliers to target consumers?**

No

**5. Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?**

No

**6. Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?**

No

## Test Run of Business Forms

There is no intention to introduce new forms for business or others to complete. If this were to happen then we commit to test run these forms before introduction, with those who would be using them, in order to ensure they are easy to use and fit for purpose.

## **Digital Impact Test**

The Adjudicator will be expected to hold and exchange information digitally, unless when dealing with a business which does not have access to technology (which is unlikely to happen often). We have, in other impact assessments, made conclusions that the Adjudicator will need to make information available in both electronic and hard copy. The policy will not have an impact on, or will be impacted by, digital processes.

A Data Protection Impact Assessment has been completed for the implementation of the Tied Pubs (Scotland) Act 2021.

## **Legal Aid Impact Test**

These SSIs do not introduce any new processes or rights to access to justice to individuals which the Scottish Government anticipates could require access to legal aid or incur expenditure from the legal aid fund.

## **Enforcement, Sanctions and Monitoring**

Under section 5 of the Tied Pubs (Scotland) Act 2021, Scottish Ministers are required to review the performance of the Adjudicator over the first two years of operation and then at three yearly intervals thereafter. This will include an assessment of performance of the duties in the instruments to which the Adjudicator is subject, i.e.:

- Duties in the Freedom of Information (Scotland) Act 2002
- Duties in Part 1 of the Public Records (Scotland) Act 2011
- Duties in Parts 2 and 3 of the Public Services Reform (Scotland) Act 2010

Anyone dissatisfied with the Adjudicator's handling of a request they have made under the Freedom of Information (Scotland) Act 2002 will have a statutory right to require the Adjudicator to review its handling of the request. After that, if they remain dissatisfied, they will be able to exercise their statutory right to appeal to the Scottish Information Commissioner to decide whether the case has been handled correctly.

The Keeper of the Records of Scotland will be able to issue an action notice to the Adjudicator in respect of failure to comply with the Public Records (Scotland) Act 2011 and publicise any failure to comply with an action notice under section 7.

## **Implementation and Delivery Plan**

The legislation is expected to come into force on 7 October 2024. It will be for the Adjudicator to ensure that they operate in accordance with the instruments.

## **Post-Implementation Review**

Scottish Ministers are required to review the performance of the Adjudicator, once formally established, over the first two years of operation and then at three yearly intervals thereafter.

The Adjudicator is also required to prepare and make public an annual report of its activities during the financial year, which will inform the review. Scottish Ministers must lay a copy of the annual report before the Scottish Parliament every year.

## Summary and Recommendation

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

The table below summarises the costs and benefits of the options outlined above for the Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2024. Given the analysis above and the summary, we recommend Option 2: Require Adjudicator to publish information about certain types of expenditure and the exercise of functions.

Option 2 makes the Adjudicator subject to the same requirements as other public bodies. In a challenging economic environment, it provides transparency that the Adjudicator is operating efficiently, effectively and transparently.

	<b>Benefits</b>	<b>Costs</b>
Option 1 Do nothing	No change – no benefit.	No change – no costs.
Option 2 Require Adjudicator to publish information about certain types of expenditure and the exercise of functions	Businesses would benefit from assurance that the Adjudicator was operating efficiently, effectively, and with transparency, as a result of this instrument.  May avoid the need for some freedom of information requests.	Some minimal additional costs for the pub-owing businesses who will pay a levy to fund the Adjudicator.

Option 2 is the preferred option of the Scottish Government.

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

The table below summarises the costs and benefits of the options outlined above for the Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024. Given the analysis above and the summary, we recommend Option 2: Make the Adjudicator subject to duties on records management and freedom of information similar to other public bodies.

Option 2 makes the Adjudicator subject to the same requirements as other public bodies. In a challenging economic environment, it provides transparency that the Adjudicator is operating efficiently, effectively and transparently.



	<b>Benefits</b>	<b>Costs</b>
Option 1 Do nothing	Less of an administrative burden on the Adjudicator	No change – costs are likely to be similar under both options.
Option 2 Make the Adjudicator subject to duties on records management and freedom of information similar to other public bodies	<p>Ensure good governance, openness and transparency. May encourage further confidence in the regulatory regime.</p> <p>Businesses would benefit from assurance that the Adjudicator was operating efficiently, effectively, and with transparency, as a result of this instrument.</p>	Some minimal additional costs for the pub-owing businesses who will pay a levy to fund the Adjudicator.

Option 2 is the preferred option of the Scottish Government.

## **Declaration and Publication**

I have read the Business and Regulatory Impact Assessment, and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Richard Lochhead

Date: 24 April 2024

Minister's name: Richard Lochhead

Minister's title: Minister for Small Business, Innovation, Trade and Tourism

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