

Data Protection Impact Assessment

Tied Pubs (Scotland) Act 2021 - Implementation

The following pieces of secondary legislation may be required to implement the Tied Pubs (Scotland) Act 2021:

- The Tied Pubs (Scotland) Act 2021 (Commencement No. 1) Regulations 2024
- The Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2024
- The Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024
- The Scottish Pubs Code Regulations 2024
- The Tied Pubs (Fees and Financial Penalties) (Scotland) Regulations 2024
- The Tied Pubs (Scotland) Act 2021 (Commencement No. 2) Regulations 2024
- The Tied Pubs (Scottish Arbitration Rules) Amendment Order 2024

Version date: 18 April 2024

Review date: September 2024

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.

Tied pubs are owned by a pub-owning business (the landlord) and leased to a tenant. Tenants must buy some or all of their products and services ("the tie") from the pub-owning business 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. As of May 2023, it is estimated there were just under 700 tied pubs in Scotland.

The Act commits the Scottish Government to lay a Scottish Pubs Code before Parliament and to appoint an Adjudicator.

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. 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 were subject to neither a product tie nor a service tie,
- (c) 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.

A Pubs Code and a Pubs Code Adjudicator for tied pubs has existed in England and Wales since 2016. The Pubs Code applies to pub-owning businesses that own 500 tied pubs or more, compared to the Scottish Pubs Code which applies to all pub-owning businesses in Scotland.

The text of the proposed legislation/amendment is attached at Annex A.

This Data Protection Impact Assessment (DPIA) works in conjunction with the [Article 36\(4\) ICO](#) consultation form submitted in advance of this, as the proposal requires consultation with the Information Commissioner's Office (ICO).

This DPIA is undertaken on behalf of the data controllers who will be providing advice, investigating non-compliance, and arbitrating disputes– in compliance with UK General Data Protection Regulation (UKGDPR) Article 35(10).

1. Contact and schedule information

1.1	SG department	Food and Drink Division, Agriculture and Rural Economy Directorate
1.2	Contact email	ti edpubs@gov.scot
1.3	Data protection support email Data protection officer	dpa@gov.scot dataprotectionofficer@gov.scot
1.4	Is your proposal primary legislation, secondary legislation or other form of statutory measure?	The proposal is secondary legislation. There is also a statutory requirement to establish a Scottish Pubs Code Adjudicator.
1.5	What stage is the legislative process at? Please indicate any relevant timescales and deadlines.	<p>We are aiming to lay the first commencement regulations relating to the Adjudicator on 19 April 2024. We are aiming to lay the code and the remaining legislation before the Scottish Parliament on 2 and 3 May 2024.</p> <p>We are also aiming for the Scottish Pubs Code Adjudicator to be appointed by May/June 2024. A shadow Scottish Pubs Code Adjudicator has been appointed.</p>

2. Introductory information

	Questions	Comments
2.1	Summary of proposal	Legislation necessary to implement the Tied Pubs (Scotland) Act 2021 and establishment of the Scottish Pubs Code Adjudicator.
2.2	<p>Description of the personal data involved</p> <p>Please also specify if this personal data will be special category data, or relate to criminal convictions or offences</p>	<p>The draft Scottish Pubs Code includes a requirement on pub-owning businesses to provide information to the Adjudicator – to inform the Adjudicator that they are a pub-owning business, to keep the Adjudicator informed of any changes to the ownership of their business or if they are no longer a pub-owning business.</p> <p>Pub-owning businesses that are subject to a financial penalty (if they are found to have not complied with the code, following an investigation by the Adjudicator), must give the Adjudicator relevant accounting information at the Adjudicator’s request.</p> <p>The legislation will apply to all pub-owning businesses so we expect that information provided by them will include personal data relating to individuals acting as sole traders, partners, and company directors. The data will include their name and will likely also include email, telephone numbers, and contact addresses (but the contact information that they provide will not be mandated by the legislation).</p> <p>The Act allows for the Adjudicator to arbitrate in disputes about non-compliance with the code between tied pub tenants and pub-owning businesses. The code makes further provision for when this can occur e.g. in relation to Market Rent Only leases. As a result of this, it is likely the tied pub tenant will need to</p>

	Questions	Comments
		<p>provide their contact information, and that of their pub-owning business to the Adjudicator.</p> <p>The draft Scottish Pubs Code will also require pub-owning businesses to disclose publicly available enforcement action against the pub in the last two years, for example relating to health and safety, and planning. This information should already be publicly available, either by request or on a website. To comply with the Town and Country Planning (Scotland) Act 1997, each Scottish Planning Authority must keep a register of formal notices served for an indefinite period. The Health and Safety Executive also has a public register of enforcement notices.</p> <p>To make sure the appropriate governance arrangements are in place for the Adjudicator, the Adjudicator will be made subject to the Freedom of Information (Scotland) Act 2002 and the Public Records (Scotland) Act 2011 and other relevant legislation.</p>
2.3	<p>Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons?</p> <p>If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights, or use of social profiling to inform policy making.</p>	<p>If the Adjudicator decides to collect equality information, this could result in changes to its practices and how it delivers its services. In turn this information could be used for social profiling to inform policy decision making as part of any review of the Scottish Pubs Code Adjudicator.</p>
2.4	<p>Necessity, proportionality and justification</p> <p>What issue/public need is the proposal seeking to address?</p>	<p>The principles of necessity and proportionality have been considered throughout the Tied Pubs Scotland Bill legislative process, which was approved by the Scottish Parliament in 2021. A similar pubs code and</p>

	Questions	Comments
	<p>What policy objective is the legislation trying to meet?</p> <p>Were less invasive or more privacy-friendly options considered, and if so why were these options rejected?</p> <p>Are there any potential unintended consequences with regards to the provisions e.g., would the provisions result in unintended surveillance or profiling?</p> <p>Have you considered whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of those safeguards and how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>Adjudicator scheme is also in place in England and Wales.</p> <p>In order to ensure that the Adjudicator is aware of all the affected parties under the Act and can provide appropriate and correct guidance to the direct parties involved, pub-owning businesses will be required to provide their name to the Adjudicator.</p> <p>This requirement is necessary because it is not possible for the Adjudicator to identify every pub-owning business operating in Scotland, so identification needs to be based on self-reporting. This option will support the objective of minimising the impact on the public purse and upon resources, as the contact details provided by pub-owning businesses will allow the Adjudicator to collect a levy (as required by the Act) from the pub-owning businesses to fund its work.</p> <p>We considered the option of requiring a pub-owning business to have an in-house code compliance officer (as is the case in England and Wales), but it was considered this option was disproportionate to the Scottish context where all pub-owning businesses are governed by the code, not just pub-owning businesses owning 500 tied pubs or more.</p>
2.5	<p>Will the implementation be accompanied by guidance or by an associated Code of Conduct?</p> <p>If the latter, what will be the status of the Code of Conduct? (statutory or voluntary?)</p>	<p>The Scottish Pubs Code Adjudicator shall publish guidance on how pub-owning businesses can comply with the code.</p>

3. Data Controllers

Organisation		Scottish Pubs Code Adjudicator	
Activities		<ul style="list-style-type: none"> • Arbitrate (or appoint an arbitrator) on disputes between tied pub tenants and pub-owning businesses in relation to code compliance. • Advise on the Scottish Pubs Code. • Power to investigate non-compliance with the code. • Provide guidance on the adjudicators practice and procedures in carrying out its functions, application and governance of the code, and the steps for pub-owning businesses to comply with the code. • Prepare a statement on its investigation policy. • Collect a levy from pub-owning businesses. 	
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?		Yes	
Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing	<p>(c) Legal obligation: the processing is necessary for you to comply with the law (not including contractual obligations).</p> <p>(e) Public task: the processing is necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law.</p>	<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data</p> <p>Include condition from Schedule 1 or 2 of the Data Protection Act 2018</p>	<p>Substantial public interest condition: 6. Statutory and government purposes</p> <p>Conditions for processing data</p> <p>(a) Explicit consent (if the Adjudicator ran a survey of tenants)</p> <p>(f) Legal claims or judicial acts (if the information is shared during arbitration for example with the Adjudicator)</p>

Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018		Legal gateway for any sharing of personal data between organisations	Not relevant
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4. Consultation

	Questions	Comments
4.1	<p>Have you consulted with the ICO using the Article 36(4) form? (please provide a link to it)</p> <p>If the ICO has provided feedback, please include this.</p>	<p>Yes</p> <p>Feedback from ICO:</p> <p>“Thank you for submitting your Article 36(4) enquiry form to us about secondary legislation which creates an Adjudicator for Scottish pubs and a Scottish Pubs Code. You have complied with your requirements under Article 36(4) of the UK GDPR.</p> <p>Having considered the submission, we would like to highlight a few data protection considerations.</p> <p>The ICO understands that the legislation will not prescribe what personal data needs to be shared to support the processes that will happen as a result of the legislation. We acknowledge that it will be for the controllers to ensure compliance with data protection law once the legislation is implemented. We recognise that the Adjudicator and/or the Scottish Pubs Code may determine the type of personal data which is processed as a result of the powers and obligations derived from the legislation.</p> <p>In light of the above, we would like to advise that the Adjudicator and/or the Scottish Pubs Code will want to include</p>

	Questions	Comments
		<p>some early thinking about the below areas in particular:</p> <ul style="list-style-type: none"> • 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(s); • use of information about criminal offences that may need to be disclosed to the Adjudicator under these provisions. <p>More information on how data protection law applies to organisations can be found on our website.</p> <p>We do not wish to engage further on this matter at this time.”</p> <p>The requirement for a landlord to disclose criminal offences has since been amended in the Scottish Pubs Code since the ICO’s correspondence. Notwithstanding, guidance will be provided to the Adjudicator on the lawful use of information that is disclosed under the Code.</p>
4.2	Do you need to hold a public consultation and if so has this taken place? What was the result?	<p>Yes - two consultations have taken place. The responses and analysis of results can be found at:</p> <p>Tied pubs: draft Scottish Pubs Code - Part 1 - Scottish Government - Citizen Space (consult.gov.scot)</p> <p>Tied Pubs - Scottish Pubs Code - part 2 - Scottish Government - Citizen Space (consult.gov.scot)</p> <p>Two focused consultations have also taken place on applying the Scottish Arbitration Rules and on the Market Rent Only process.</p>
4.3	Were there any Comments/feedback from the public consultation about privacy, information or data protection?	<p>There were no comments raised about privacy or data protection.</p> <p>A number of comments were raised primarily from pub-owning businesses, about the information requirements placed on pub-owning businesses during the</p>

	Questions	Comments
		<p>consultation. Some gaps included the information to be submitted to the rent assessor. Tenants also raised the need for more information used to calculate the rent – how benchmarks and actual data is used.</p> <p>One pub-owning business also mentioned that the proposal of providing information to all new tenants should be restricted to certain types of leases and focused to 5 years, as the information may not be readily available.</p> <p>One respondent to the Scottish Arbitration Rules consultation suggested that learnings from arbitration awards should be issued via guidance and advice, rather than publishing individual arbitration awards as is the case in England and Wales.</p>

5. Further assessment and risk identification

	Question	Comments
5.1	Will the proposal require the creation of new identifiers, or require the use of existing ones?	Use existing ones.
5.2	Will the proposal require regulation of: <ul style="list-style-type: none"> • technology relating to processing • behaviour of individuals using technology • technology suppliers • technology infrastructure • information security 	No
5.3	Will the proposal require establishing or change to operation of an established public register (e.g. Accountancy in Bankruptcy, Land Register etc.) or other online service/s?	No
5.4	Please provide details of whether the proposal will involve the	Potentially – the Tied Pubs (Scotland) Act 2021 provides for the Adjudicator to

	Question	Comments
	collection or storage of data to be used as evidence or use of investigatory powers (e.g.in relation to fraud, identify theft, misuse of public funds, any possible criminal activity, witness information, victim information or other monitoring of online behaviour)	possibly investigate a pub-owning business's compliance with the code if the Adjudicator has reasonable grounds to suspect that the business has failed to comply with the code. Any investigation could include a request for personal information. The Adjudicator can also require a person to provide information for certain purposes: (a)investigating a pub-owning business's compliance with the code, (b)monitoring whether the requirement to comply with a direction given under section 9(2)(a) has been fulfilled, (c)exercising functions in relation to the offer of a market rent only lease.
5.5	Would the proposal have an impact on a specific group of persons e.g. children, vulnerable individuals, disabled persons, persons with health issues, persons with financial difficulties, elderly people? (Please specify) In what way?	No.
5.6	Is there anything potentially controversial or of significant public interest in the policy proposal as it relates to processing of data? For example, is the public likely to view the measures as intrusive or onerous? Are there any potential unintended consequences with regards to the provisions e.g. would the provisions result in unintended surveillance or profiling. Have you considered whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of those safeguards and how any safeguards ensure the balance of	No. There are similar processes in place in England and Wales – there is a pubs code and a Pubs Code Adjudicator. No. There are no potential unintended consequences with regards to the provisions. These would not result in unintended surveillance or profiling. The Data Protection Act 2018 and UK General Data Protection Regulation apply to the processing of all personal data. Additionally, public authorities must always ensure that data sharing is compliant with the Human Rights Act 1998, and they must not act in a way

	Question	Comments
	any competing interests in relation to the processing.	that would be incompatible with a person's rights under the European Convention on Human Rights.
5.7	Are there consequential changes in other legislation that need to be considered as a result of the proposal or the need to make further subordinate legislation to achieve the aim?	No.
5.8	Will this proposal necessitate an associated code of conduct? If so, what will be the status of the code of conduct (statutory, voluntary etc.)?	No.
5.9	Have you considered whether the intended processing will have appropriate safeguards in place, for example in relation to data security, limitation of storage time, anonymisation? If so, briefly explain the nature of those safeguards. Please indicate how any safeguards ensure the balance of any competing interests in relation to the processing.	Yes – as part of the creation of the Scottish Pubs Code Adjudicator office. This will involve developing procedures for recording information, retention policies and anonymisation in order to secure compliance with GDPR and Public Record requirements.
5.10	Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons? If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights or use of social profiling to inform policy making.	Not directly. The processing of personal data will be required to meet certain aims such as: <ul style="list-style-type: none"> - the Adjudicator can arbitrate in disputes, - the Adjudicator can provide guidance on the code, - the Adjudicator can identify how many tenants a pub-owning business has, - the Adjudicator can directly communicate and engage with relevant parties. Arbitration could result in fees and expenses needing to be paid. It could also result in determining how much levy a pub-owning business should pay.

	Question	Comments
5.11	Will the proposal include automated decision making/profiling of individuals using their personal data?	No.
5.12	Will the proposal require the transfer of personal data to a 'third country'? (Under UK GDPR this is defined as country outside the UK.)	No.

6. Risk Assessment

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
<p>6.1.1 Risk to individual rights</p> <ul style="list-style-type: none"> • right to be informed • right of access • right to rectification • right to erasure • right to restrict processing • right to data portability • right to object • rights in relation to automated decision making and profiling <p>Will this initiative result in any detriment if individuals do not want their personal data to be processed? This is particularly relevant if special category data is being processed.</p> <p>If individuals do not want their personal data to be processed, in the case of arbitration, this may make it impossible to carry out arbitration cases and to ensure that tenants can</p>	<p>Many of the risks to individual rights are already mitigated for in the Act. For example, there are only three circumstances in which parties can be fined by the Adjudicator for not providing information. The Scottish Pubs Code also specifies what information pub-owning businesses can provide and focuses these on specific purposes.</p>	<p>Low</p>	<p>Green</p>	<p>Accepted</p>

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
<p>access their rights under the Scottish Pubs Code.</p> <p>If individual pub-owning businesses do not share contact information (which could include personal data) then they could be found in breach of the code. This could result in a financial penalty, a direction to do, or stop doing, a course of action, or the requirement to publish specified information relating to an investigation.</p> <p>Individuals could receive a fine if they fail to provide information to the Adjudicator, in three circumstances: investigating whether a pub-owning business has complied with the code, monitoring whether the requirement to comply with an Adjudicator's direction has been fulfilled or exercising functions in relation to the offer of an MRO lease.</p>				

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
6.2.1 Privacy risks Purpose limitation	The Adjudicator should create a data protection policy and include a data protection notice when dealing with any queries.	Medium	Amber	Mitigated
6.2.2 Privacy risks Transparency – data subjects may not be informed about the purposes and lawful basis for the processing, and their rights	The Adjudicator should refer any contacts to their data protection policy and their data protection/GDPR notice.	Medium	Amber	Mitigated
6.2.3 Privacy risks Minimisation and necessity	The operation of the Adjudicator and the Scottish Pubs Code will be kept under review by the Scottish Government, this includes considering the impact on affected businesses. A retention policy for keeping personal data should also be created by the Adjudicator.	Medium	Amber	Reduced
6.2.4 Privacy risks Accuracy of personal data	The personal data collected will be minimal, it will be the responsibility of the pub-	Low	Green	Accepted

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
	owning business or pub tenant to provide the correct data.			
6.3.1 Security risks Keeping data securely Retention	The Adjudicator should create a data protection policy and should comply with GDPR and the policy when setting up any customer relationship management system.	Medium	Amber	Mitigated
6.3.2 Security risks Transfer – data may be lost in transit	The Adjudicator should consider this risk as part of any contract it has with providers (if any) to deliver arbitration work and include specific clauses in a contract to ensure data is not lost. We consider this likelihood to be unlikely given the Adjudicator is expected to carry out arbitration in-house.	Medium	Amber	Reduced
6.3.3 Security risks				
6.4.1 Other risks <will this impact on children?>	There are no other risks. This will not impact on children.			

Data Protection Officer (DPO)

The DPO has been consulted in the development of the Article 36(4) form.

The DPO was provided an opportunity to comment on this DPIA and their advice is below.

Advice from DPO	Action
Clarify your intentions on how you will engage with the Adjudicator once established so that they understand how they need to comply with the various obligations on them.	Officials have identified the relevant information on data protection from the public bodies team and will incorporate this into the Adjudicator's work plan/induction.

I confirm that the Tied Pubs (Scotland) Act 2021 – implementation has been sufficiently assessed in compliance with the requirements of the UKGDPR and Data Protection Act 2018

Name and job title of a IAO or equivalent	Date each version authorised
Alice Biggins, Deputy Director	18 April 2024