

# Fairer Scotland Duty Assessment

## Title of policy

Implementation of the Tied Pubs (Scotland) Act 2021.

## Summary of aims and expected outcomes of policy

The Tied Pubs (Scotland) Act 2021<sup>1</sup> (“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.

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

The Act also establishes a Scottish Pubs Code Adjudicator to apply and enforce the code, including arbitrating in disputes about non-compliance between the tenant and the pub-owning business. The Adjudicator is to be funded through a levy on pub-owning businesses.

Implementation will impact on a limited number of people, chiefly tied pub tenants and pub-owning businesses. Secondary impacts may be experienced by tied pub customers, beer/spirit suppliers and producers, surveyors, legal professionals, and people working on arbitration, as well as the Scottish Courts and Tribunals Service (through any appeals).

## Summary of evidence

We sought evidence through the written consultations on the Scottish Pubs Code, a workshop with tenants, internal discussions with Scottish Government officials as part of the equality impact assessment process, and through a desk review of research and statistics on the sector in Scotland and in England and Wales.

We found that public houses and bars<sup>2</sup> in Scotland are fairly evenly spread across areas of deprivation. The most deprived quintile has 22% of pubs in Scotland, the

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

<sup>2</sup> Source - Scottish Government analysis of the Office for National Statistics (ONS) Inter-Departmental Business Register (IDBR). The information looked at the number of business sites of VAT/PAYE registered businesses with SIC56302 operating in Scotland by SIMD quintile and size. The description of SIC56302 is Public houses and bars. This includes the preparation and serving of

middle quintile has 25% of pubs and quintile 4 has 20% of pubs. The least deprived has the proportion of pubs at 11%.

Two small-scale studies also found evidence of low earnings by tied pub tenants and substantial debt levels amongst the wider night time industry. The 2014 study by CAMRA<sup>3</sup> of 200 tied pub tenants found that 54% of respondents stated their take home annual earnings as between £10,001 and £15,000, and 10.5% of respondents earned under £10,000. A more recent unrepresentative survey carried out by the Scottish Licensed Trade Association in 2023 found that amongst 31 tied pub tenants, 10 tenants had a take home pay (after tax) of less than £10,000, and 8 tenants had a take home pay (after tax) of £10,000-£14,999.

The Scottish Licensed Trade Association (SLTA) has reported that hospitality businesses, including tied pubs, have substantial debt as a result of covid. A 2022 SLTA snapshot survey<sup>4</sup> found that one in two hospitality outlets are carrying significant Covid-related debt. By way of further illustration, the British Institute of Innkeeping ran a survey of publicans with 250 respondents. The results were reported in February 2022<sup>5</sup>. 55% of respondents faced debts of over £40,000 per pub. Whilst this covers all types of publicans across the UK, who may or may not be tied pub tenants, it gives an indication of debt levels.

In England and Wales, a pubs code for tied pubs has existed since 2016. The pubs code only applies to pub-owning businesses owning 500 tied pubs or more, the code does not include guest beer agreements, and MRO leases can only be requested at certain points, so there is some difference to the Scottish Pubs Code.

The English and Welsh Pubs Code Adjudicator commissioned research to understand the barriers to engagement with tied pub tenants<sup>6</sup>. They identified that there were two groups of tenants who had low awareness of their rights: “They are often characterised by low tech skills, a resistance to using online services, and are typically older, with many survey respondents being past retirement age”<sup>7</sup>. The research also identified the need for some change in communication of the Pubs Code Adjudicator, some of which included making materials available for printing and some in-person events<sup>8</sup>. This points to the need for the Adjudicator to be accessible in their service delivery through a variety of means, not purely online.

The strength of evidence on Scottish tenants is somewhat undermined by the small size of the tied pubs sector in Scotland (estimated to be just under 700 in May 2023). We also have limited 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. There are

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beverages for immediate consumption on the premises by bars, taverns, cocktail lounges, discotheques licensed to sell alcohol (with beverage serving predominant), beer parlours. Business sites are rounded to 5.

<sup>3</sup> [Submission from CAMRA on the Tied Pubs \(Scotland\) Bill \[ARCHIVED CONTENT\]](#) (nrscotland.gov.uk)

<sup>4</sup> [Scotland's pubs and bars face 'unprecedented challenges' - The Scottish Licensed Trade Association](#) (theslta.co.uk)

<sup>5</sup> [One in three pubs 'has no cash reserves' - The Caterer](#)

<sup>6</sup> [The Pubs Code Adjudicator discovery report](#) (publishing.service.gov.uk)

<sup>7</sup> [The Pubs Code Adjudicator discovery report](#) (publishing.service.gov.uk)

<sup>8</sup> [The Pubs Code Adjudicator discovery report](#) (publishing.service.gov.uk)

data gaps on the income levels of tied tenants post-covid in Scotland, in that we have limited, non-representative information from a small number of tenants on their incomes post-covid.

We cannot know whether changes as a result of the Act would be uniformly made in the sector across different areas of deprivation in Scotland, as we do not know how the market will respond given this is a new intervention in Scotland.

There is some evidence of a digital divide in skills amongst the wider population and different socio economic groups<sup>9</sup>. Household internet access appears to increase with household income<sup>10</sup>.

Based on the England and Welsh experience, there may be a difference in awareness and take-up of information about proposed rights and obligations under the Scottish Pubs Code, the role of the Adjudicator and the available rights under the code, between tied pub tenants with less and those with more socio-economic disadvantage, and between those with better and worse IT skills.

Tenants may be unevenly impacted by pub-owning businesses responding to the Act and by pub-owning businesses making decisions such as to changing tied pubs to other types of pubs or businesses. If as a result tenants need to move or take another tenancy, this could be more difficult for those on lower incomes as they have smaller reserves of wealth<sup>11</sup> to call upon and could have more unpaid caring responsibilities<sup>12</sup>.

## **Summary of assessment findings**

A number of improvements were considered including:

1. The Adjudicator to provide explanatory information about their service and about the code on launch to pub-owning businesses to share with their tenants in both electronic and hard-copy, to ensure it reaches all tenants. This will form part of a wider communication campaign.
2. Make sure the Adjudicator is able to provide information which can be printed and provided in different formats, to allow tenants who have fewer IT skills/IT access to take up the opportunities presented by the Act.
3. Work with organisations so that tied tenants have access to a peer network, enabling them to share ideas and information about the code. The Adjudicator could also provide written guidance to tenants.
4. Require pub-owning businesses to provide information on sources of advice to tenants, so that they can get access to support. Possibly consider accrediting advisers.
5. Make tenants' experience of requesting an MRO as straightforward and as inexpensive as possible through the code, so that tenants from all backgrounds can benefit from the Act.

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<sup>9</sup> [Digital Participation and Social Justice in Scotland Report Summary by CarnegieUK Trust](#)

<sup>10</sup> [Fairer Scotland Duty impact assessment | Scotland's Census \(scotlandscensus.gov.uk\)](#)

<sup>11</sup> [Pre-pandemic wealth inequality remained high - gov.scot \(www.gov.scot\)](#)

<sup>12</sup> [Unpaid care work worth £36bn in Scotland – Oxfam Scotland \(oxfamapps.org\)](#)

We will take forward options 1, 2 and 5. We will also take forward option 3, if organisations agree. We will look to do this during the first year of the Scottish Pubs Code being operational. These options have the advantage of making the provision of information more inclusive, tailored and address some of the likely issues with tenants. They will however require some cost and resource to progress.

We are not proposing to take forward option 4, as it is already envisaged that pub-owning businesses will signpost tenants to advice on the code.

Inclusion of these points should contribute to the following outcomes:

- Greater awareness of the code and the Adjudicator amongst all types of tenants.
- More even uptake of various elements of the code, regardless of tenants' socio-economic background.

**Sign off**

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