POLICY NOTE

THE SCOTTISH PUBS CODE ADJUDICATOR (DUTY TO PUBLISH CERTAIN INFORMATION) REGULATIONS 2024

SSI 2024/188

The above instrument was made in exercise of the powers conferred by section 23 of the Tied Pubs (Scotland) Act 2021. The instrument is subject to affirmative procedure.

Summary Box

The Scottish Pubs Code Adjudicator is a new statutory body established by the Tied Pubs (Scotland) Act 2021[1]. The Adjudicator will be appointed following a parliamentary resolution.

The purpose of this instrument is to make the Scottish Pubs Code Adjudicator subject to a duty to publish information under Public Services Reform (Scotland) Act 2010[2].

Policy Objectives of the Act

The Tied Pubs (Scotland) Act 2021 received Royal Assent in May 2021. The Act establishes the Scottish Pubs Code Adjudicator. 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.

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

Policy Objectives of the SSI

The purpose of this instrument is to make consequential amendment to the Public Services Reform (Scotland) Act 2010 using powers under the Tied Pubs (Scotland) Act 2021 in time for the regulatory regime coming into force on 7 October 2024.

---

[1] https://www.legislation.gov.uk/asp/2021/17/contents

[2] https://www.legislation.gov.uk/asp/2010/8/contents

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. This SSI, together with the Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024, make sure the appropriate governance arrangements are in place for the Adjudicator when the regulatory regime is created. 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.

This SSI adds the Scottish Pubs Code Adjudicator to the public bodies listed in schedule 8 of the Public Services Reform (Scotland) Act 2010. This makes the Scottish Pubs Code Adjudicator subject to duties under Part 3 of that Act[3] to publish information about certain types of expenditure and the exercise of functions.

Inclusion in schedule 8 would create 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 would also require the Adjudicator to publish information on what steps it has taken to promote and increase sustainable growth and to improve efficiency, effectiveness and economy.

Ultimately this SSI will help ensure that the Scottish Pubs Code Adjudicator practices good governance and making the best use of its financial resources. 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.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

Given the technical nature of this instrument a formal consultation exercise was not undertaken. An informal and quick 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 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.

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)

[3] https://www.legislation.gov.uk/asp/2010/8/part/3

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.

Impact Assessments

The following Impact Assessments have been prepared for the supporting instruments which will implement the Act:

- 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.

As this is a technical instrument no effects on equality, children, environment, island communities and fairer Scotland are anticipated. There is potentially a privacy impact in terms of publishing information on renumeration. However, the Adjudicator will need to ensure compliance with data protection law once the legislation is implemented. The Scottish Government will provide guidance from the Information Commissioner's Office to ensure privacy is respected. Impacts on business are detailed in the financial effects section below.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed for the following SSIs:

- The Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2024 (this SSI); and
- Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024.

The BRIA is attached and is also available on the Scottish Government website. 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.

Creating requirements on the Adjudicator through this SSI will have some limited impact on the Scottish Government and on businesses funding the Adjudicator, as there will be some minimal additional costs for the pub-owning businesses through levy payments. The additional cost will involve the administration and publication of an annual statement on expenditure, staff renumeration and information on steps the Adjudicator has taken to promote and increase sustainable growth and to improve efficiency, effectiveness and economy. It is anticipated that staff appointed to the Scottish Pubs Code Adjudicator Office will be able to absorb these functions. It provides transparency to Government and pub-owning businesses that the Adjudicator is operating effectively and transparency.

Scottish Government
Directorate for Agriculture and Rural Economy

May 2024