**POLICY NOTE**

**THE TIED PUBS (SCOTTISH ARBITRATION RULES) AMENDMENT ORDER 2024**

**SSI 2024/189**

The above instrument was made in exercise of the powers conferred by 17(b) of the Arbitration (Scotland) Act 2010. This instrument is laid in the Scottish Parliament in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010. The instrument is subject to the affirmative procedure.

**Summary Box**


The Tied Pubs (Scotland) Act 2021 requires the creation of a statutory Scottish Pubs Code and the appointment of a Scottish Pubs Code Adjudicator to oversee and enforce the code.

The purpose of this instrument is to allow the Adjudicator to apply the Scottish Arbitration Rules when arbitrating in disputes between tied pub tenants and pub-owning businesses.


**Policy Objectives**

The Tied Pubs (Scotland) Act 2021[1] ("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. The Adjudicator, or an arbitrator appointed on their behalf, will arbitrate in disputes between tenants and their landlords about whether a pub-owning business has complied with the code.

The Act requires arbitrations to be carried out in accordance with the rules of either the Chartered Institute of Arbitrators (CIArb) or any other dispute resolution body. The CIArb is a not-for-profit UK registered charity recognised internationally as a centre of excellence for alternative dispute resolution. Their rules are used throughout the UK.

The purpose of this instrument is to allow the Adjudicator to have the choice to apply and use the Scottish Arbitration Rules, if they so wish, to arbitrations brought under the code. The Adjudicator would be required to apply the rules consistently to all arbitrations if chosen.

The Scottish Arbitration Rules are modern rules and processes for dealing with arbitrations, governed by the law in Scotland and were established in the Arbitration (Scotland) Act 2010. The Arbitration (Scotland) Act 2010 is not yet commenced for the purposes of statutory arbitrations, but powers are available for the Scottish Government to treat the Act as commenced for the purposes of arbitrations under the Tied Pubs Act.

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

The ability to apply the Scottish Arbitration Rules (SARs) would mean that Scottish legislation could be relied on, where appropriate, to support arbitrations under the Tied Pubs (Scotland) Act 2021. The application of SARs ensures that the forum for the arbitration is in Scotland and that any appeals are dealt with by the Scottish courts. It would also provide the Adjudicator with flexibility and discretion to identify the most appropriate rules for tied pubs arbitrations.

Alongside these 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;
- Tied Pubs (Scotland) Act 2021 (Commencement No. 2) Regulations 2024.

If these instruments are approved, the intention is for most of these to come into force at the same time on 7 October 2024, with the commencement regulations coming into force earlier 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**

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.

A short, focused and closed consultation on arbitration rules ran between 17 May and 7 June 2022. Six responses were received. At that time, we had thought we could use the SARs alongside other arbitration rules, but this is not a viable option under the Tied Pubs (Scotland) Act 2021. Two respondents strongly agreed, and one tended to agree, with the proposal to use the SARs alongside other rules, and the remainder did not comment. Observations by respondents pointed to the clarity and accessibility of the SARs, compared to the pre-2010 regime, and a request for the Adjudicator to specify which SARs will be mandatory for all arbitrations and which are optional. One response thought that allowing the arbitration to be conducted under the rules of CIArb or another dispute resolution body is likely to cause confusion amongst parties, however this is not a valid option.

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.

**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.

As this instrument is simply increasing the choice of arbitration rules that a dispute can be arbitrated under, no direct effects on equality, children, environment, island communities or Fairer Scotland are anticipated.

It may indirectly support equality and Fairer Scotland, as the SARs place fairness and impartiality as the standards by which disputes are to be resolved by arbitration. In general, successful implementation of the Act would mean that tenant and pub-owning business relationships are fairer and more balanced, which should minimise discrimination on any basis, protected characteristic or otherwise.

The SARs may also maintain data protection requirements as rule 26 provides that the arbitrator and the parties must not disclose some confidential information unless this is provided for.

Impacts on business are detailed in the financial effects section below.

**Financial Effects**

The BRIA is attached and is also available on the Scottish Government website. The BRIA sets out the cost and benefits of various options for pub-owning businesses and tied pub tenants.

The addition of modern, accessible Scottish Arbitration Rules for the Adjudicator to choose and use to arbitrations brought under the code, is not expected to lead to any additional costs for any of the parties involved in disputes.

Scottish Government
Directorate for Agriculture and Rural Economy

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