



Scottish Pubs Code Adjudicator

Consultation on the Scottish Tied Pubs Adjudicator's Investigation Policy

**Analysis of responses to the consultation
exercise**

March 2025

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Executive summary

The [Tied Pubs \(Scotland\) Act 2021](#) (the Act) introduced the Scottish Pubs Code (the Code) and the Scottish Pubs Code Adjudicator (the Adjudicator). The Adjudicator's role is to ensure compliance with the Code, provide arbitration expertise, and resolve disputes between tenants and pub-owning businesses. The Adjudicator has the statutory power to investigate suspected breaches of the Code and impose enforcement measures, including financial penalties, if a breach is confirmed.

The Code is due to be in place by April 2025, and work is now underway to establish the Adjudicator's investigation policy. As part of that work, the Adjudicator has undertaken a public consultation on the approach to be taken to investigation and enforcement.

The consultation, which ran from 16 October to 27 November 2024, aimed to engage both pub-owning businesses and tenants in considering the Adjudicator's investigation and enforcement powers regarding compliance with the Code. A total of eight responses were received: four from pub-owning businesses, three from organisations, and one from an individual. The responses to the consultation can be found on the Scottish Government Citizen Space portal¹.

Going forward, the views expressed will inform the development of the Adjudicator's investigation policy, and help shape fair practices within the Scottish pubs industry.

This summary presents main findings from the analysis of responses to the consultation.

Investigations (Q1 and Q2)

Half of the total respondents agreed that the proposed criteria for commencing or continuing an investigation and the proposed practices and procedures for investigations provided clarity (in both cases 4 respondents agreed, 2 respondents disagreed, and 2 respondents selected 'don't know').

The formality of the investigation process was considered by several respondents. This process could incur cost and generate delays, and responses from some pub-owning businesses and organisations suggested that investigative action should be considered a last resort, with a more collaborative approach taken initially. Greater clarity could be provided in the approach for less serious breaches of the Code. However, one organisation was concerned with the proposal that, for isolated or inadvertent suspected and/or alleged breaches, the Adjudicator may discuss the matter with the relevant pub-owning business initially.

Other issues raised included ensuring equality of treatment between pub-owning businesses of differing sizes; potential inclusion within the [Scottish regulators' strategic code of practice](#) developed under the Regulatory Reform (Scotland) Act 2014; clarity about which stages in investigations factual or legal submissions could be made; and ensuring that conflicts of interest issues are avoided.

¹ [The Scottish Tied Pubs Adjudicator's Investigation Policy - Scottish Government consultations - Citizen Space](#)

Enforcement (Q3a and Q3b)

Most respondents agreed that the provisions regarding whether to use enforcement powers provided clarity (7 respondents agreed; 1 respondent selected 'don't know'). The majority of respondents also agreed that the provisions regarding which enforcement powers to use provided clarity (6 respondents agreed and 2 respondents selected 'don't know').

Concerns were expressed by pub-owning businesses about the potential costs related to the investigation and enforcement process, and the threat these posed to the viability of smaller businesses; it was also suggested that financial penalties needed to be sufficient to deter Code breaches.

Financial penalty criteria (Q4)

Views were mixed on whether the proposed approach to financial penalty criteria provided clarity (3 respondents agreed, 3 respondents disagreed, and 2 selected 'don't know').

Pub-owning businesses suggested that the upper limit for financial penalties was disproportionate; however, as this has already been set by regulations, this falls outside the scope of the current consultation.

One organisation also queried whether any or all of the sums raised through financial penalties will be provided to the tenants affected (note that under section 10 of the Act, financial penalties are paid into the Scottish Consolidated Fund).

Section 1: Introduction

This report presents the findings of an analysis of the responses to a consultation on the Scottish Tied Pubs Adjudicator's investigation policy.

Background

The Tied Pubs (Scotland) Act 2021 (the Act) received Royal Assent in May 2021. Its purpose is to govern the relationship between tied-pub landlords (pub-owning businesses) and tenants. The Act covers all tied pubs and pub-owning businesses in Scotland. As of May 2023, the Scottish Government estimated that there were just under 700 tied pubs² in Scotland and at least 10 pub-owning businesses³.

The Act commits the Scottish Government to appoint a Scottish Pubs Adjudicator (the Adjudicator) and make a Scottish Pubs Code (the Code) consistent with the regulatory principles in the Act that:

- There is fair and lawful dealing by pub-owning businesses in relation to their tied-pub tenants
- Tied-pub tenants should not be worse off than they would be if they were not subject to any product or service tie
- The tied agreements offer a fair share of risk and reward to both parties.

The Code is due to be in place by April 2025.

The Adjudicator's role is to oversee, advise on and enforce the Code, ensuring compliance with the Code, providing arbitration expertise and resolving disputes between tenants and pub-owning businesses. The Adjudicator has the statutory power to investigate suspected breaches of the Code and to impose enforcement measures, including financial penalties, if a breach is confirmed.

The consultation

A consultation on the Adjudicator's investigation policy was launched on 16 October 2024, with a closing date of 27 November 2024 for responses.

The consultation included four questions seeking views on the criteria to be adopted in deciding whether to carry out an investigation; the practices and procedures to be followed in carrying out an investigation; the criteria to be adopted in deciding whether to take enforcement action; and what type of action to take; and the criteria to be used in setting financial penalties. For reference, the consultation questions are shown in full in Annex 1. It should be noted that this consultation focused solely on the Adjudicator's investigation and enforcement functions; the Scottish Government had previously conducted three separate consultations on the Code itself.

² See: [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 - footnotes](#)

³ See: [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](#)

The consultation was available on the Scottish Government’s consultation webpage. A link to the survey was disseminated via the Adjudicator’s stakeholder engagement group for sharing with relevant groups and networks. Respondents could complete an online consultation questionnaire or submit a response by email or post.

The consultation aimed to engage both pub-owning businesses and tenants in considering the Adjudicator’s investigation and enforcement powers regarding compliance with the Code. Going forward, the views expressed will inform the development of the Adjudicator’s investigation policy, and help ensure fair and transparent enforcement of the Code.

The respondents

The consultation received a total of 8 responses.

The consultation included a series of questions seeking further information about respondents. This section presents information drawn from the responses to the questions on respondent types and locations and numbers of tied pubs held by pub-owning businesses.

Respondents were asked to identify themselves as a pub-owning business, a tied-pub tenant, an individual or an organisation. In response to this question 4 respondents identified as pub-owning businesses, 3 identified as organisations, and 1 identified as an individual. No respondent identified themselves as a tied-pub tenant. See Table 1.1.

Table 1.1: Types of respondents

Respondent type	Total
Pub-owning business	4
Organisation	3
Individual	1
Tied-pub tenant	0
All respondents	8

A list of the respondents to the consultation is included at Annex 2.

Pub-owning businesses were asked to provide details of the local authority areas in which they held tied pubs. Each of the four pub-owning businesses provided this information which indicated that, between them, they operated pubs in every local authority area in Scotland. See Annex 3 for full details.

Pub-owning businesses were also asked to indicate the number of occupied and unoccupied tied pubs in Scotland. Each of the four pub-owning business respondents provided details:

- One pub-owning business indicated that it had 11–20 occupied tied pubs (and did not indicate a number for unoccupied tied pubs)
- One pub-owning business indicated that it had 51–100 occupied tied pubs and 2–4 unoccupied
- Two pub-owning businesses indicated that they had 101–499 occupied tied pubs and 5–16 unoccupied

One pub-owning business provided the number of tied pubs held in each local authority area.

Nature of the responses

All respondents provided an answer at each of the closed (tick-box) questions, while between 4 and 6 respondents provided comments at each question (4 respondents commented at Questions 1 to 3, while 6 respondents commented at Question 4).

Analysis and reporting

The remainder of this report presents a question-by-question analysis of responses to the consultation questions – both the closed (tick-box) questions and the follow-up questions inviting respondents to provide further comments.

The responses to the closed questions are presented in tables in the report. The comments provided by respondents at each question are presented below each table.

As with any public consultation exercise, it should be noted that those responding generally have a particular interest in the subject area. Therefore, the views they express cannot necessarily be seen as representative of broader public opinion.

Section 2: Responses to the consultation questions

The consultation paper explained that the Adjudicator cannot carry out an investigation until a statement has been made publicly available on:

- The criteria that the Adjudicator will adopt in deciding whether to carry out an investigation
- The practices and procedures that the Adjudicator will follow in carrying out an investigation
- The criteria that the Adjudicator will adopt in deciding (i) whether to take enforcement action, and (ii) what type of action to take
- The criteria that the Adjudicator will use in setting the amount of a financial penalty imposed.

The consultation paper set out the proposed approach on each of these aspects of investigation and enforcement. Four questions invited views. The responses to each question are presented below.

Criteria for investigation (Q1)

The consultation outlined the proposed approach for the criteria that the Adjudicator will adopt when deciding whether to commence or continue an investigation. Criteria proposed included impact, strategic importance, risks and benefits, and resources.

Question 1: Does the information under this section provide clarity on the criteria the Adjudicator will adopt when deciding whether to commence or continue an investigation? [Yes / No / Don't know]

All eight respondents answered Question 1. Four respondents (3 pub-owning businesses and 1 organisation) answered 'yes', and two respondents (1 pub-owning business and 1 organisation) answered 'no'. The remaining two respondents (2 organisations) selected 'don't know'. See Table 2.1.

Table 2.1: Q1 – Does the information under this section provide clarity on the criteria the Adjudicator will adopt when deciding whether to commence or continue an investigation?

Response	Number of respondents
Yes	4
No	2
Don't know	2
Total	8

Four respondents (2 pub-owning businesses and 2 organisations) provided additional comments at Question 1, as follows:

- One pub-owning business agreed that the factors listed are relevant, and that the Adjudicator should consider impacts on pub-owning businesses. They also thought that formal investigation should be a last resort, and that the Adjudicator should work collaboratively with pub-owning business and tenants

and provide guidance. There was also a suggestion that the Adjudicator should be added to the [Scottish regulators' strategic code of practice](#) developed under the Regulatory Reform (Scotland) Act 2014. Regulators should understand the sectors they regulate and tailor their approach, recognising challenges for small businesses.

- One pub-owning business suggested that the Adjudicator's approach should differentiate between compliant businesses and those choosing not to comply.
- One organisation acknowledged that scale of impact was an understandable criterion, but suggested that it was important for fairness across the sector that the size of the pub-owning business should not affect the protections available to tenants.
- One organisation suggested that the Adjudicator should be included in the code of practice under the 2014 Act (see above) – they particularly highlighted the need to understand the businesses being regulated and the economic impact of regulation. They also suggested that a compliance reporting system, similar to that used in England and Wales, be adopted, and wished to see greater clarity on how the Adjudicator will record suspected breaches and communicate these to pub-owning businesses.
- One organisation thought that the formal investigation process appeared to be too onerous, and could lead to significant costs and time delays for those wishing to raise a formal grievance.
- Another organisation similarly considered that formal investigations should be considered by the Adjudicator as a last resort, with other available powers used where possible.
- Two organisations suggested that, once a formal investigation has been opened, there should be a stay on any arbitrations on the issues involved.

Practices and procedures for investigations (Q2)

The consultation paper outlined the proposed practices and procedures for investigations in relation to scoping and planning, scope refinement, consultation with subject matter experts, detailed investigation and the summarising of findings.

Question 2: Does the information under this section provide clarity on the practices and procedures the Adjudicator intends to adopt during investigations? [Yes / No / Don't know]

All eight respondents answered this question. Four respondents (3 pub-owning businesses and 1 organisation) said the information provided clarity on the practices and procedures the Adjudicator intends to adopt, and two respondents (1 pub-owning business and 1 organisation) said it did not. The remaining two respondents (1 organisation and 1 individual) selected 'don't know'. See Table 2.2.

Table 2.2: Q2 – Does the information under this section provide clarity on the practices and procedures the Adjudicator intends to adopt during investigations?

Response	Number of respondents
Yes	4
No	2
Don't know	2
Total	8

Four respondents (2 pub-owning businesses and 2 organisations) provided additional comments at this question. They made the following points:

- One pub-owning business queried at which stage and when a pub-owning business would be entitled to make any factual and/or legal submissions before any summary of findings is made.
- One pub-owning business and one organisation advised that the allocation of resources needed to be proportionate and commensurate with the alleged breach.
- One pub-owning business suggested the policy should set out how the Adjudicator proposed to deal with less serious breaches of the Code.
- One organisation sought further information on the failure to provide information on provisions contained in Schedule 2 (section 5) to the Act.
- One organisation disagreed with the statement: 'For isolated or inadvertent suspected and/or alleged breaches, the Adjudicator may discuss the matter with the relevant pub-owning business initially.'
- One organisation noted a need to prevent conflicts of interest in professional advice provided to the Adjudicator.

Enforcement action criteria (Q3a and Q3b)

The consultation paper outlined the criteria to be used in considering enforcement action:

- **Consistent:** Ensuring fair, equitable and non-discriminatory enforcement by coordinating actions between tenants and pub-owning businesses.
- **Fair:** Decisions on enforcement are guided by legislation. The Adjudicator will ensure that the choice of enforcement option is always consistent, balanced and fair.
- **Impartial:** Enforcement decisions are made impartially, avoiding conflicts of interest or undue influence.
- **Transparent:** Providing written explanations of contraventions and proposed actions, with opportunities for discussion before final decisions.
- **Proportionate:** Enforcement action will be proportionate to the circumstances of each case and will not be affected by improper or undue pressure from any source. Where the Adjudicator considers that formal action is necessary each case shall be decided on its own merits.

The consultation paper further stated that contraventions of the Code will be confirmed in writing, with the consequences for failing to remedy these set out clearly. These may include directing the business to do, or stop doing, something

specified to comply with the Code; directing the business to publish specified information related to the investigation in a specified manner by a specified deadline; and imposing a financial penalty on the business.

Two questions sought views as follows:

Question 3a: Does the section on enforcement powers provide clarity on how the Adjudicator will decide whether to use these powers? [Yes / No / Don't know]

Question 3b: Does this section provide clarity on how the Adjudicator will decide which powers to use? [Yes / No / Don't know]

All eight respondents answered each question.

At Question 3a, seven respondents (4 pub-owning businesses and 3 organisations) agreed that the section on enforcement powers provides clarity on how the Adjudicator will decide whether to use these powers. The remaining respondent (an individual) selected 'don't know'. See Table 2.3a.

Table 2.3a: Q3a – Does the section on enforcement powers provide clarity on how the Adjudicator will decide whether to use these powers?

Response	Number of respondents
Yes	7
No	0
Don't know	1
Total	8

At Question 3b, six respondents (4 pub-owning businesses and 2 organisations) agreed that the section provides clarity on how the Adjudicator will decide which powers to use. The remaining respondents (1 organisation and 1 individual) selected 'don't know'. See Table 2.3b.

Table 2.3b: Q3b – Does this section provide clarity on how the Adjudicator will decide which powers to use?

Response	Number of respondents
Yes	6
No	0
Don't know	2
Total	8

Four respondents (2 pub-owning businesses and 2 organisations) provided comments on their response at either or both of Question 3a or 3b. Two respondents provided explanation for their response and three provided comments on additional specific aspects of the investigation process for improvement:

- One pub-owning business noted that the costs of investigation, and the legal costs that might be associated with such an investigation, could be

substantial. As the Code applied to all pub-owning businesses, irrespective of size, there is a risk that enforcement action might result in insolvency for some businesses.

- One pub-owning business advised that consistency and transparency are key to a successful approach. A collaborative approach should be used for discussing and remedying any potential inadvertent breaches of the Code.
- Two organisations believed that there needs to be greater clarity about outcomes, particularly in relation to (i) whether tenants will be compensated for losses as well as costs, and (ii) ensuring that any penalty is sufficient to deter breaches of the Code.

Financial penalty criteria (Q4)

The consultation paper outlined the proposed approach to setting financial penalties in situations in which the Adjudicator finds, following an investigation, that a pub-owning business has breached the Code. The maximum set for such financial penalties is 1% of the annual turnover of the pub-owning business. The consultation paper outlined the steps – that is, initial assessment, and consideration of mitigating and aggravating factors – for determining financial penalties.

Question 4: Does the information under this section provide clarity on the criteria the Adjudicator will use to set the amount of a financial penalty? [Yes / No / Don't know]

All eight respondents answered Question 4. Views on financial penalties were split, with three respondents agreeing (2 pub-owning businesses and 1 organisation) and three respondents disagreeing (1 pub-owning business and 2 organisations) that the information provided clarity on the criteria the Adjudicator will use to set the amount of a financial penalty; the remaining two respondents (1 pub-owning business and 1 individual) selected 'don't know' See Table 2.4.

Table 2.4: Q4 – Does the information under this section provide clarity on the criteria the Adjudicator will use to set the amount of a financial penalty?

Response	Number of respondents
Yes	3
No	3
Don't know	2
Total	8

Six respondents (3 pub-owning businesses and 3 organisations) provided further comments regarding financial penalties:

- Three pub-owning companies thought that the upper limit for financial penalties set by the regulations was disproportionate. All three suggested that the limit should have been set at 1% of turnover relating to Scottish tied pubs only, while two suggested a fixed cash sum maximum as an alternative. However, this matter has already been set by regulations, and falls outside the scope of the current consultation.
- One pub-owning company observed that, although the upper limit for any financial penalty had been set by [The Tied Pubs \(Fees and Financial](#)

[Penalties\) \(Scotland\) Regulations 2024](#), there needed to be clarity on how and by what measurement the 'initial penalty amount' will be determined.

- One organisation queried whether tenants would receive any of the money paid by pub-owning businesses as financial penalties; if not, it was suggested that the Adjudicator should support tenants that are taking legal action to recover damages for any breach of the Code. (Note that under section 10 of the Act, financial penalties are paid into the Scottish Consolidated Fund.)

Annex 1: The consultation questions

Criteria and time limits for investigation

Question 1: Does the information under this section provide clarity on the criteria the Adjudicator will adopt when deciding whether to commence or continue an investigation? [Yes / No / Don't know]

- Please explain your answer.
- Are there any other factors that should be taken into account?

Practices and procedures for investigations

Question 2: Does the information under this section provide clarity on the practices and procedures the Adjudicator intends to adopt during investigations? [Yes / No / Don't know]

- Please explain your answer.
- Are there any other issues relating to the outcome of an investigation and its handling processes which you wish to raise?

Enforcement action criteria

Question 3a: Does the section on enforcement powers provide clarity on how the Adjudicator will decide whether to use these powers? [Yes / No / Don't know]

Question 3b: Does this section provide clarity on how the Adjudicator will decide which powers to use? [Yes / No / Don't know]

- Please explain your answers for questions 3a and 3b.
- Are there any specific aspects of the investigation process that you believe need improvement?

Financial penalty criteria

Question 4: Does the information under this section provide clarity on the criteria the Adjudicator will use to set the amount of a financial penalty? [Yes / No / Don't know]

- Please explain your answer.
- Are there any specific aspects of the investigation process that you believe need improvement?

Annex 2: Respondents to the consultation

Pub-owning businesses

Admiral Taverns
Greene King
Punch Pubs & Co
Star Pubs

Organisations

Campaign for Pubs
Pubs Advisory Service Ltd
Scottish Beer and Pub Association

Individuals

David Scott

Annex 3: Additional information about the respondents

Table A3.1: Locations of tied pubs held by pub-owning business respondents

Local authority area	Number of businesses with pubs in each LA area
Aberdeen City Council	2
Aberdeenshire Council	3
Angus Council	3
Argyll and Bute Council	2
City of Edinburgh Council	4
Clackmannanshire Council	2
Comhairle nan Eilean Siar	1
Dumfries and Galloway Council	2
Dundee City Council	3
East Ayrshire Council	3
East Dunbartonshire Council	3
East Lothian Council	4
East Renfrewshire Council	1
Falkirk Council	2
Fife Council	3
Glasgow City Council	4
Inverclyde Council	3
Midlothian Council	2
North Ayrshire Council	2
North Lanarkshire Council	3
Orkney Islands Council	1
Perth and Kinross Council	3
Renfrewshire Council	3
Scottish Borders Council	2
Shetland Islands Council	1
South Ayrshire Council	3
South Lanarkshire Council	4
Stirling Council	3
The Highland Council	3
The Moray Council	1
West Dunbartonshire Council	4
West Lothian Council	3



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