



# Scottish Pubs Code Adjudicator

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Consultation on the Scottish Tied Pubs  
Adjudicator's Investigation Policy

October 2024

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## Introduction

As the Scottish Pubs Code Adjudicator, I am pleased to invite you to contribute to our ongoing efforts to shape fair practices within the Scottish pubs industry. Your experience and perspective are crucial in ensuring transparency and equity.

This consultation aims to engage both pub-owning businesses and tenants regarding the Adjudicator's investigation powers for compliance with the Code and its enforcement where necessary.

Please note, this consultation focuses solely on the Adjudicator's investigation and enforcement functions. The Scottish Government has conducted a separate engagement on the pubs Code – [Scottish Pubs Code for tied pubs - Scottish Government consultations - Citizen Space](#).

This questionnaire is divided into 4 parts:

- Part 1 - Information about Respondents
- Part 2 - Background and Purpose
- Part 3 - Investigation and Enforcement Function
- Part 4 - Consultation Questions

If you have any further questions regarding the questionnaire, please provide your feedback and suggestions by 27 November at [Pubscodeadjudicator@gov.scot](mailto:Pubscodeadjudicator@gov.scot)

Thank you for your commitment to fostering a thriving and equitable pub industry in Scotland. I look forward to your active participation.

Best regards,

Sarah Havlin  
Scottish Pubs Code Adjudicator

## Part 1: Information about you

1. Please indicate which category applies to you:

Pub-owning business	
Tied pub tenant	
Individual	
Organisation	

2. What is the name of the organisation you represent? Please skip this question if you are not completing this questionnaire on behalf of an organisation.

Text box

3. For tied pub tenants only - have you received a rent review in the last 12 months?

Yes	
No	
Not applicable	

For tied pub tenants only - when was the last date of your rent review?

Text box

4. For tied pubs tenants only - if you are a tenant, what type of tenancy do you have? (Your tenancy agreement should make clear the type of tenancy you have)

Short term tenancy	
Market rent only	
Don't know	
Not applicable	
Other (please state)	

5. For pub-owning company only – how many tied pubs do you operate in Scotland including those currently **NOT** occupied by tenants?

	Occupied	Not Occupied
1		
2-4		
5-10		
11-20		
21-50		
51-100		
101 – 499		
500 and over		
None/Not Applicable		

6. For tenants and pub-owning companies only – where is your tied pub (or tied pubs) primarily located? (Please tick all that apply)

Aberdeen City Council	
Aberdeenshire Council	
Angus Council	
Argyll and Bute Council	
City of Edinburgh Council	
Clackmannanshire Council	
Comhairle nan Eilean Siar	
Dumfries and Galloway Council	
Dundee City Council	
East Ayrshire Council	
East Dunbartonshire Council	
East Lothian Council	
East Renfrewshire Council	
Falkirk Council	
Fife Council	
Glasgow City Council	
Inverclyde Council	
Midlothian Council	
North Ayrshire Council	
North Lanarkshire Council	
Orkney Islands Council	
Perth and Kinross Council	
Renfrewshire Council	
Scottish Borders Council	
Shetland Islands Council	
South Ayrshire Council	
South Lanarkshire Council	

Stirling Council	
The Highland Council	
The Moray Council	
West Dunbartonshire Council	
West Lothian Council	

7. For organisations or representatives only – based on the information you have, how many tied pubs are there in a given Local Authority? Please add total number next to the relevant Local Authorities.

Aberdeen City Council	
Aberdeenshire Council	
Angus Council	
Argyll and Bute Council	
City of Edinburgh Council	
Clackmannanshire Council	
Comhairle nan Eilean Siar	
Dumfries and Galloway Council	
Dundee City Council	
East Ayrshire Council	
East Dunbartonshire Council	
East Lothian Council	
East Renfrewshire Council	
Falkirk Council	
Fife Council	
Glasgow City Council	
Inverclyde Council	
Midlothian Council	
North Ayrshire Council	
North Lanarkshire Council	
Orkney Islands Council	
Perth and Kinross Council	
Renfrewshire Council	
Scottish Borders Council	
Shetland Islands Council	
South Ayrshire Council	
South Lanarkshire Council	
Stirling Council	
The Highland Council	
The Moray Council	
West Dunbartonshire Council	
West Lothian Council	

If required, please give any further details on the numbers you have provided.

Text box

## Part 2: Background and purpose

[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 pubs<sup>1</sup> in Scotland and at least 10 pub-owning businesses<sup>2</sup>.

The Act commits the Scottish Government to 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; and
- the tied agreements offer a fair share of risk and reward to both parties.

The Scottish Government conducted consultations on the Code in two parts. The [first consultation](#) focused on market rent only leases and guest beer agreements, while the [second consultation](#) addressed the remaining aspects of the Code. A further consultation on the Code was issued on **17 September**.

The Act also establishes a **Scottish Pubs Code Adjudicator** to oversee, advise on and enforce the Code, ensuring compliance, 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 may impose enforcement measures, including financial penalties, if a breach is confirmed.

The purpose of this consultation is to outline the Adjudicator's approach to investigation and enforcement.

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<sup>1</sup> [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](#)

<sup>2</sup> [Supporting documents - 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 - gov.scot \(www.gov.scot\)](#)

## Respondent Information Form

Please Note this form **must** be completed and returned with your response.

[To find out how we handle your personal data, please view our privacy policy - Scottish Government - Privacy.](#)

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email Address

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name  
 Publish response only (without name)  
 Do not publish response

### Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.



We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

## Part 3: Investigation and enforcement function

### Statement for initiating an investigation

This part of the document explains how the Adjudicator will seek to ensure compliance with the Code. The Act provides that the Adjudicator may 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. However, the Adjudicator cannot carry out an investigation until a statement about the following criteria has been made publicly available:

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

Taking each of these in turn:

#### **The criteria that the Adjudicator will adopt in deciding whether to carry out an investigation**

The Adjudicator shall, within four weeks of a suspected failure to comply with the Code coming to their attention, determine whether to initiate an investigation, after the expiry of which period an investigation may not be initiated.

The Adjudicator will conduct investigations discreetly and as quickly as possible, gathering all necessary information. If it is reasonably apprehended that the Code has not been complied with, parties will have the opportunity to explain their position in writing, via video call, or in person.

Case complexity, workload and witness numbers may be factors in determining the timeline of the investigation, however the Adjudicator will aim to complete each case within 12 months of the suspected failure to comply with the Code coming to the attention of the Adjudicator. The Adjudicator will typically look to inform parties of the expected lifespan on the investigation and keep parties informed if more time is required than predicted. Investigations will be guided by four key principles of Impact, Strategic Importance, Risks and Benefits and Resources, as explained below.

#### **Impact**

The Adjudicator will assess both the impact on individual tenants and the number of affected tenants. If the alleged breach has a significant impact, the Adjudicator is more likely to investigate, especially if it could affect a large number of tenants. Where there is an allegation of a one-off breach of the Code, unless it significantly affects a large number of tenants, the Adjudicator may be less likely to start an immediate investigation. Instead, the Adjudicator may address such cases initially

through discussions with the pub-owning business or via the arbitration process when a tenant formally refers the matter.

### **Strategic Importance**

The Adjudicator will assess whether starting an investigation aligns with statutory obligations and use their best endeavours to exercise their functions consistently with the regulatory principles, as set out 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; and
- that any agreement between a pub-owning business and a tied-pub tenant should fairly share the risks and rewards amongst the parties.

The Adjudicator will, when investigating complaints, be alive to identifying patterns of behaviour that lead to Code breaches. Investigations are more likely when there are grounds, in the Adjudicator's view, to allege and/or suspect arrangements or other actions may have been designed to frustrate Code principles.

For isolated or inadvertent suspected and/or alleged breaches, the Adjudicator may discuss the matter with the relevant pub-owning business initially. The Adjudicator may, when deciding whether to investigate a matter, have regard to whether an investigation may deter non-compliance and/or encourage compliance with the Code in the future.

### **Risks and Benefits**

Before starting an investigation, the Adjudicator will have regard to potential outcomes. These are not limited to formal enforcement remedies; they may also involve clarifying the Code. The Adjudicator will consider the likelihood of an investigation resulting in successfully ending practices that breach the Code (when deciding whether to investigate or continue an investigation in respect of any given issue).

### **Resources**

The Adjudicator will investigate or continue an investigation only if, in the view of the Adjudicator, it is reasonable and proportionate to do so. Even if resource-intensive, an investigation may be justified - the Adjudicator will consider the impact on tied tenants, strategic significance and risks. Conversely, the Adjudicator may decide not to commence or continue with an investigation where the impact, significance and risk are not considered to (or no longer) justify the allocation of resources.

When deciding whether to investigate, the Adjudicator also weighs the benefits, such as education and promoting compliance, against potential future resource demands arising from similar matters. When making decisions in respect of and in relation to investigations and arbitrations the Adjudicator will act consistently and will have regard to the four stated principles of Impact, Strategic Importance, Risks and Benefits and Resources.

## Practice and Procedure

In carrying out an investigation, the Adjudicator will take steps that may include (but are not limited to):

<b>Scoping and Planning</b>	<b>Consultation with subject matter experts</b>
Initial fact gathering/ information gather/ background and context	Engage industry experts and surveyors
Gather evidence	Legal advice/research
Terms of reference/objectives/confidentiality/data management	<b>Detailed investigation and process information</b>
Resource required	Prepare for witness interviews/evidence capture
Cost of investigation	Complete preparation and follow-up
Legal research	Review details and other relevant facts/issues
Timeline	Organise and evaluate facts
<b>Scope refinement</b>	<b>Summarise findings</b>
Narrow the scope of the review and identify most relevant documents	Analysis and reporting to client and/or business and other stakeholders that is subject to the investigation
Review the detail	Publish a written report of findings
Highlight key facts	Establish monitoring and evaluation arrangements
Assess additional resource requirement	

### The criteria that the Adjudicator will adopt in deciding (i) whether to take enforcement action, and (ii) what type of action to take

The Act empowers the Adjudicator to enforce compliance when a pub-owning business breaches the Code. The enforcement can include financial penalties and aims to raise awareness and understanding of the Code. The Adjudicator will consider the following criteria for enforcement action:

<b>Consistent:</b>	Ensuring fair, equitable and non-discriminatory enforcement by coordinating actions between tenants and pub-owning businesses.
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<b>Fair:</b>	Decisions on enforcement are guided by legislation. The Adjudicator will ensure that the choice of enforcement option is always consistent, balanced and fair.
<b>Impartial:</b>	Enforcement decisions are made impartially, avoiding conflicts of interest or undue influence.
<b>Transparent:</b>	Providing written explanations of contraventions and proposed actions, with opportunities for discussion before final decisions.
<b>Proportionate:</b>	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 will be considered on its own merits.

These enforcement measures are designed to ensure adherence to the Scottish Pubs Code. Contraventions will be confirmed in writing with the consequences for failing to remedy them set out clearly, including:

- 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.

### **The criteria that the Adjudicator will use in setting the amount of a financial penalty imposed**

The Act allows for the Adjudicator to recover some or all costs of an investigation from the person who made the complaint (which could be a tied tenant) if the complaint is found to be vexatious or wholly without merit. The Adjudicator may also impose a financial penalty on a pub-owning business if, following an investigation, the Adjudicator concludes that the business has failed to comply with the Code.

The Tied Pubs [\(Fees and Financial Penalties\)](#) (Scotland) Regulations 2024 set the current maximum financial penalty the Adjudicator may impose as 1% of the pub owning business's annual turnover (or 1% of group turnover where the pub-owning business is part of a group). Where the business is part of a wider pub-owning group then the percentage will apply to the combined annual turnover of the group in the UK. This represents a significant penalty. The pub-owning group is defined as the pub-owning business and its group undertakings (which has the meaning given by section [1161 of the Companies Act 2006](#)).

In practice, each case and the appropriate penalty to be imposed will be considered on its own facts and circumstances and will require assessment of the nature and severity of any breach or failure in compliance. Subject to the permitted maximum penalty limit, the Adjudicator will calculate the appropriate level of a financial penalty by applying the following criteria:

**Initial Assessment:** The Adjudicator begins by determining an initial penalty amount based on the severity of the breach or if there was a failure to follow a recommendation.

**Aggravating Factors:** The initial amount may be increased (subject to the permitted maximum penalty limit) if there are aggravating factors, such as:

- if the breach or failure was intentional;
- if there were repeated or multiple breaches or failures;
- if the breach continued even after a recommendation from the Adjudicator;
- if the breach was due to negligence and could have been avoided.

**Mitigating Factors:** The initial amount may be reduced if there are mitigating factors, such as:

- the extent to which the party cooperated with the investigation;
- how quickly the party acted to remedy the breach or failure;
- any other relevant matters, such as consideration of measures already taken by the pub-owning business to prevent future breaches and proportionality (ensuring the penalty is fair and reasonable).

Having conducted an investigation into a pub-owned business's compliance with the Code, the Adjudicator will publish a report about the investigation. This report will state the Adjudicator's findings and the reasons for them, what enforcement action (if any) the Adjudicator has taken or intends to take and the reasons for that decision. A report need not identify by name the investigated pub-owning business. However, if the Adjudicator intends to identify the pub-owning business by name in a report, the Adjudicator will provide the business with a reasonable opportunity to comment on a draft of the report within a specified timescale before publishing it. Comments from the pub-owning business will be carefully considered, and if necessary, the report may be revised and re-provided to the business for further review before final publication.

## Part 4: Consultation questions

### Question 1

#### Criteria and time limits for Investigation:

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?

### Question 2

#### Practices and Procedures for Investigations:

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?

### Question 3a

#### Enforcement Action Criteria:

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

#### Enforcement Action Criteria:

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?

### Question 4

**Financial Penalty Criteria:**

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?



## **Responding to this Consultation**

We are inviting responses to this consultation by **27 November 2024**

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/agriculture-and-rural-economy/scottish-tied-pubs-adjudicators-investigation>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of **27 November 2024**

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to [pubscodeadjudicator@gov.scot](mailto:pubscodeadjudicator@gov.scot) or by post to:

Sarah Havlin  
Scottish Pubs Code Adjudicator  
Food and Drink Division - Directorate for Agriculture and Rural Economy  
Scottish Government  
B1 Spur  
Saughton House  
Broomhouse Drive  
Edinburgh  
EH11 3XD

## **Handling your response**

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

## **Next steps in the process**

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

## **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at [pubscodeadjudicator@gov.scot](mailto:pubscodeadjudicator@gov.scot)

## **Scottish Government consultation process**

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



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Any enquiries regarding this publication should be sent to us at

The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-83601-903-9 (web only)

Published by The Scottish Government, October 2024

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS1515350 (10/24)

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