

# **Child Rights and Wellbeing Impact Assessment (CRWIA)**

**for secondary legislation to implement the  
Tied Pubs (Scotland) Act 2021**

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## for secondary legislation to implement the Tied Pubs (Scotland) Act 2021

The following pieces of secondary legislation are required to implement the Tied Pubs (Scotland) Act 2021<sup>1</sup>:

- Tied Pubs (Scotland) Act 2021 (Commencement No. 1) Regulations 2024
- Tied Pubs (Scotland) Act 2021 (Commencement No. 2) Regulations 2024
- Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2024
- Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024
- The Tied Pubs (Scottish Arbitration Rules) Amendment Order 2024
- Tied Pubs (Scotland) Act 2021 (Fees and Financial Penalties) Regulations 2024
- Scottish Pubs Code Regulations 2024

### Disclaimer

This document is an initial assessment of the impact of the secondary legislation to implement the Tied Pubs (Scotland) Act 2021 and the Scottish Government will continue to review and update this document where required during the parliamentary process. Any future iterations will reflect an increased understanding of these impacts as the amount of data and research available continues to develop.

This impact assessment should be read in conjunction with the Equality Impact Assessment and the Fairer Scotland Duty Assessment.

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

## CRWIA Stage 1 – Screening

### 1. Brief Summary (Guidance Section 2.1)

The Tied Pubs (Scotland) Act 2021 (“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.

Tied pubs are pubs which are owned by a pub-owning business and leased to a tenant. Tenants must buy some or all of their products and services from the pub-owning business (their landlord) or someone nominated by the pub-owning business (“the tie”). Ties can include, for example, beer, and these products and services are often charged at a higher cost than on the open market. In return, tenants sometimes pay lower rent and receive other support from the pub-owning business. As of May 2023, it is estimated there are just under 700 tied pubs in Scotland.

#### **The Tied Pubs (Scotland) Act 2021 (Commencement No. 1) Regulations 2024**

The purpose of this instrument is to commence parts of the Act which will allow for the Scottish Pubs Code Adjudicator to be established and for an investigation policy statement to be developed by the Adjudicator.

#### **The Tied Pubs (Scotland) Act 2021 (Commencement No. 2) Regulations 2024**

The purpose of this instrument is to commence the remaining provisions of the Tied Pubs (Scotland) Act 2021.

#### **The Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2024**

The purpose of this instrument is to make the Scottish Pubs Code Adjudicator subject to a duty to publish information under the Public Services Reform (Scotland) Act 2010. This SSI will help ensure that the Scottish Pubs Code Adjudicator practices good governance and makes the best use of its financial resources.

#### **The Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024**

The purpose of this instrument is to make the Scottish Pubs Code Adjudicator subject to duties on records management and freedom of information similar to other public bodies. It also allows for Scottish Ministers to improve the Adjudicator’s efficiency, effectiveness, and economy under the Public Services Reform (Scotland) Act 2010.

#### **The Tied Pubs (Scottish Arbitration Rules) Amendment Order 2024**

The purpose of this instrument is to allow the Adjudicator to apply the Scottish Arbitration Rules, if the Adjudicator wishes to do so, when arbitrating in disputes between tied pub tenants and pub-owning businesses. It provides the Adjudicator

with flexibility and discretion to identify the most appropriate rules for tied pub arbitrations.

### **The Tied Pubs (Scotland) Act 2021 (Fees and Financial Penalties) Regulations 2024**

The purpose of this instrument is to set maximum limits on financial penalties and determine the arbitration fee payable for tenants in disputes. This will support the effective operation of the enforcement and dispute resolution regime on the code.

### **The Scottish Pubs Code Regulations 2024**

This instrument will create a Scottish Pubs Code for tied pubs. It creates rights and protections for tied pub tenants and places requirements on pub-owning businesses (the tied pub landlords). It is the main instrument to implement the Tied Pubs (Scotland) Act 2021. 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. It has been prepared consistently with the three regulatory principles set out in the Act. These are:

- a) the principle of fair and lawful dealing by pub-owning businesses in relation to their tied-pub tenants,
- (b) the principle that tied-pub tenants should not be worse off than they would be if they were subject to neither a product tie nor a service tie,
- (c) the principle that any agreement between a pub-owning business and a tied-pub tenant should fairly share the risks and rewards amongst the parties.

Start date of relevant proposal being drafted: June 2021

Start date of CRWIA process: October 2021

## **2. Which aspects of the relevant proposal currently affects or will affect children and young people up to the age of 18? (Guidance Section 2.1)**

### **General**

The implementation of the Tied Pubs (Scotland) Act 2021 is focused on a small group of businesses (both tied pub tenants and pub-owning businesses) within the pubs sector. In May 2023 the number of tied pubs were estimated at just under 700 tied pubs. The number of tied pub tenants in Scotland will be lower as some tenants lease multiple pubs. There are at least 10 pub-owning businesses in Scotland. It is estimated that low numbers of businesses (both tied pub tenants and pub-owning businesses) and individuals will therefore be affected.

Secondary legislation to implement the Act may have some indirect impact on children and young people, primarily where their parent or guardian is a tied pub

tenant, in terms of Article 27(1-3) Adequate standard of living of the [UN Convention on the Rights of the Child](#). The code seeks to improve the position of tied pub tenants and for some tenants this could result in material improvements to their income, which will have a knock-on impact in terms of their ability to provide for an adequate standard of living. Low numbers of businesses will be impacted by the legislation, and not all of the business owners will be parents or guardians.

### **The Tied Pubs (Scotland) Act 2021 (Commencement No. 1) Regulations 2024** **The Tied Pubs (Scotland) Act 2021 (Commencement No. 2) Regulations 2024**

As both of these regulations simply commence the Act, these regulations will not affect children and young people.

### **The Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2024**

#### **The Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024**

Both of these instruments relate to the governance and operations of a new statutory office holder, the Scottish Pubs Code Adjudicator. Given the Adjudicator's role is to enforce and oversee the statutory Scottish Pubs Code by working with pub-owning businesses and tenants the Adjudicator will not directly impact on children and young people.

### **The Tied Pubs (Scottish Arbitration Rules) Amendment Order 2024**

This order will allow the Adjudicator to use Scottish Arbitration Rules when arbitrating in disputes between tied pub tenants and pub-owning businesses. This order will therefore not directly impact on children and young people.

### **The Tied Pubs (Scotland) Act 2021 (Fees and Financial Penalties) Regulations 2024**

This instrument sets out the maximum limits on financial penalties for pub-owning businesses which do not comply with the code. The financial penalty takes into account a company's size by setting the limit as a proportion of turnover. The maximum limit is capped at 1% of annual turnover, but the maximum can only be used in cases of persistent non-compliance. The Adjudicator has discretion to be able to impose a smaller penalty where appropriate and has other enforcement actions that they can undertake. Only one financial penalty has been applied in England and Wales, where similar arrangements have been in place since 2016. Therefore, this instrument is expected to have minimal indirect impact on children of parents operating in the sector.

The instrument also sets a reasonable fee for tenants wishing to undergo arbitration of £250. The [Financial Memorandum](#) to the Tied Pubs (Scotland) Act Bill 2021 assumed that in year 1 there would be 13 arbitration cases, and this would reduce to 8 arbitration cases in year 3. There was general support (although not unanimous) in the written consultation on the code from both tenants and pub-owning businesses for a fee to be set at £250. £250 is also similar to the fee charged for tied pub tenants under the Pubs Code in England and Wales (and for the Pubs Independent Conciliation and Arbitration Service – a dispute resolution service) both of which are £200 and updated to take into account inflation pressures. This tailored and modest approach should have a minimal impact on the finances of parents working either as a tenant or who may own a pub-owning business, given the existence of other

enforcement actions than financial penalties and the code encourages parties to take steps to resolve issues before arbitration.

### **The Scottish Pubs Code Regulations 2024**

These regulations will provide tenants with opportunities and protections to improve their position.

In certain circumstances tenants will be offered a Market Rent Only lease at their request, which provide greater operational flexibility for tenants. For some tenants, this could result in improved financial benefits, depending on the market conditions, which may take some years to be realised.

A tenant, in certain circumstances, can request a guest beer agreement allowing them to buy a guest beer directly from any supplier at market price. This, in certain situations, could result in a transfer of profits from pub-owning businesses to tenants and the guest beer provider, at least in the short-term.

Tenants will also benefit from information and advice being provided to them to ensure fair and lawful dealing. There are rights for tenants to be able to request a rent review in limited circumstances which should help support the third regulatory principle: that any agreement between a pub-owning business and a tied pub tenant should fairly share the risks and rewards amongst the parties.

There may be a potential reduction in the number of pubs that operate on the tied model, reducing the opportunity for new tenants to enter into the tied pubs sector and reduced investment in tied pubs, although there may be opportunities to join the wider pubs sector through other different types of pubs.

The Scottish Pubs Code impacts on the relationship between pub-owning businesses and tied pub tenants. It therefore does not directly impact on children and young people, but it could impact upon parents/guardians that work in the tied pubs sector in terms of their material circumstances, although this will vary from tenant to tenant. Low numbers of businesses are expected to be impacted by the legislation.

### **3. Which groups of children and young people are currently or will be affected by the relevant proposal? (Guidance Section 2.1)**

As the policy measure is seeking to regulate the relationship between pub-owning businesses and tenants, it will not directly impact any particular groups of children and young people more than others as it will not directly impact on children and young people overall. It will have a minimal indirect impact in terms of housing, where tenants have accommodation as part of their tied pubs lease, for example if the number of tied pub tenancies reduce in Scotland. However, stakeholders have said that generally tied pub tenants in Scotland do not live above their tenanted pub, unlike in England. We anticipate the numbers of tenants impacted will be low, as of

May 2023 there were almost 700 tied pubs, some of which are managed by the same tenant.

## Declaration

### 4. Is a Stage 2 Children's Rights and Wellbeing Impact Assessment required? (Tick relevant requirement) (Guidance Section 2.1)

CRWIA required  No explanation required, please complete questions 5 and 6

CRWIA not required  Please explain why below and contact the children's rights unit to discuss this decision [crwia@gov.scot](mailto:crwia@gov.scot)

#### Explanation why CRWIA is not required:

No – based on estimates of the numbers of tied pubs, we envisage implementation will affect a small number of individuals. This policy does not directly affect the rights of children. Any effects are likely to be indirect as a result of their parent being a tied pub tenant or working for a pub-owning business. It could impact on those parents' ability to provide for an adequate standard of living for their children as the policy will shape how the tied pubs sector works and it could improve the position of tied pub tenants.

### 5. Sign & Date

Policy Lead Signature & Date of Sign Off: Deborah Cook, 2 April 2024

Deputy Director Signature & Date of Sign Off: Alice Biggins, 2 April 2024



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