

Tied Pubs (Scotland) Act 2021 - secondary legislation

**Island Communities Impact Assessment
(ICIA)**

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Step One – develop a clear understanding of your objectives:

The Tied Pubs (Scotland) Act 2021¹ (“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.

To implement the Tied Pubs (Scotland) Act 2021, the following package of secondary legislation is required:

- The Tied Pubs (Scotland) Act 2021 (Commencement No. 1) Regulations 2024 (To commence the provisions necessary for an adjudicator to be appointed.)
- The Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2024 (To make the adjudicator subject to duties to publish information under Public Services Reform (Scotland) Act 2010.)
- The Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024 (To make the adjudicator subject to relevant public bodies legislation.)
- The Scottish Pubs Code Regulations 2024 (To set out the Scottish Pubs Code.)
- The Tied Pubs (Scotland) Act 2021 (Fees and Financial Penalties) Regulations 2024 (To set out financial penalties for non-compliance with the Pubs Code and to set out further provision for fees and expenses relating to arbitration.)
- The Tied Pubs (Scotland) Act 2021 (Commencement No. 2) Regulation 2024 (To commence the remaining provisions of the Tied Pubs (Scotland) Act 2021.)
- The Tied Pubs (Scottish Arbitration Rules) Amendment Order 2024 (To allow the Adjudicator to apply the Scottish Arbitration Rules to arbitrations, if the Adjudicator chooses).

Objectives on the Scottish Pubs Code

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,

¹ [Tied Pubs \(Scotland\) Act 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2021/12)

(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.

For the purposes of this policy and impact assessment, islands are defined as islands that are not on mainland Scotland. The intention is that outcomes do not differ across the islands, nor between the mainland and islands, to promote fairness and equitable treatment across all commercial agreements for tied pubs. The legislation will apply consistently to all tied pubs and pub-owning businesses, regardless of their location in Scotland. There may need to be differences of approach in service delivery by the Adjudicator, but this also applies to rural areas in mainland Scotland, with the need to provide services remotely by phone or electronically.

Step two – gather your data and identify your stakeholders:

In terms of public houses and bars we have the following breakdown by local authorities with islands rounded up to the nearest five bars and pubs for 2019 and this has been updated with 2023 data, given there have been delays to implementing the legislation:

Local authority	2019	2023
Argyll & Bute	70	60
Highland	135	115
Na h-Eileanan Siar	10	10
North Ayrshire	65	60
Orkney	5	5
Shetland	10	10

Source: ONS, UK Business Counts – local units by industry (56302: Public Houses and Bars). Available on [NOMIS](#).

In the [Policy Memorandum](#) to the Tied Pubs (Scotland) Bill it was estimated that around 17% of pubs were tied pubs (based on March 2019 figures). There is likely to be at least one tied pub in the bigger islands such as Na h-Eileanan Siar and Shetland. However, the hospitality sector has been under pressure and pub and bar numbers across Scotland have declined by 7% in 2023 since 2019.

The Scottish Beer and Pub Association in 2022 asked their members how many of their tied pubs are on Scottish islands and seven pubs were identified.

In terms of breweries in 2019 and 2023 the breakdown by island local authorities rounded up to the nearest five breweries is as follows:

Local authority	2019	2023
Argyll & Bute	5	5

Highland	15	20
Na h-Eileanan Siar	0	0
North Ayrshire	0	0
Orkney	0	0
Shetland	5	0

Source: ONS, UK Business Counts – local units by industry (11050: Manufacture of beer). Available on [NOMIS](#)

Step Three - consultation:

The Scottish Government has consulted with the tied pubs sector on the development of the proposals. Two full written consultations on the Scottish Pubs Code, alongside proposals on fees and financial penalties, have been carried out. The first consultation asked for any comments on the impact on island communities. No comments were received. A focus group was also run with tied pub tenants, and we asked organisations, representing tenants and pub-owning businesses interests, that someone from the islands be involved, but they were unable to participate. Both written consultations asked pub-owning businesses if they had any tied pubs on islands – this confirmed that at least two pub-owning businesses have tied pubs on islands.

Emails were issued to the two pub-owning businesses who have tied pubs on islands inviting them to express their views on how the policy will impact on their island tied pubs. The following questions were asked:

- Which Scottish islands do you have tied pub tenants on and how many?
- Can you anticipate any unique impacts on island businesses, as a result of the Scottish Pubs Code and the implementation of the Tied Pubs (Scotland) Act?
- Are your tenants on islands likely to have different views/expectations of the code compared to tenants on the mainland?
- We think there will potentially be a positive impact for small brewers based on the islands through the proposals on guest beer, would you agree or disagree?
- We also think there would be a need for arbitration and access to the adjudicator to be available through alternative means, such as telephone and/or video-conferencing to overcome any barriers to accessing that service, do you agree or disagree?

Officials spoke with one pub-owning business who had a small number of island tied pubs and no major issues were identified. All of their island pubs were on one island. The pub-owning business said that if some of those tied pubs choose to go Market Rent Only, it would make servicing the pubs more challenging as they would be supporting two different types of rental pubs on the island.

A discussion on island issues was held with Scottish Government policy officials as part of the Equality Impact Assessment screening exercise.

The policy is not expected to impact on islands differently as all tied pubs and pub-owning businesses will be impacted.

Step Four – assessment:

We do not consider that there will be any new, substantial or unique impacts on island communities as a result of the secondary legislation.

Positive impacts for tied pub tenants on island communities are expected to have a similar impact as to tenants on mainland Scotland.

Tied pub tenants in island communities may need to access the Adjudicator’s services. This can be resolved by ensuring services can be provided either online or via telephone.

In preparing the ICIA, we have formed an opinion that our policy, strategy or service is not likely to have an effect on an island community which is not significantly different from its effect on other communities (including other island communities).

We have not identified any evidence that this secondary legislation will directly or indirectly discriminate against island communities. This policy is expected to have a positive impact on tied pub tenants across Scotland, regardless of location or the community they live in.

ICIA completed by: Deborah Cook

Position: Food and Drink Policy Manager, Food and Drink Division

Signature: Deborah Cook

Date completed: 2 April 2024

ICIA approved by: Alice Biggins

Position: Deputy Director, Food & Drink

Signature: Alice Biggins

Date approved: 2 April 2024



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