

# Proposed Tied Pubs (Code and Adjudicator) (Scotland) Bill

## Page 2: About you

Are you responding as an individual or on behalf of an organisation?

an individual

Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose "Member of the public".)

Professional with experience in a relevant subject

Please select the category which best describes your organisation

*No Response*

Please choose one of the following; if you choose the first option, please provide your name or the name of your organisation as you wish it to be published.

I am content for this response to be attributed to me or my organisation

Please provide your name or the name of your organisation

Stuart Ross

Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. We will not publish these details.

Q1. 1. Which of the following best expresses your view of establishing a statutory Scottish Pubs Code and Scottish Pubs Code Adjudicator? Please explain the reasons for your response.

Fully opposed

**Comments:**

I have spent most of my working life in the Scottish licensed trade. I was CEO of the Belhaven Group, operating 200 tenancies as well as 100 managed pubs and a substantial beer business, from 1989 to 2008. I have held many other positions in the trade, having twice been President of the Scottish Beer and Pubs Association and held the office of Chairman of the Scottish Licensed Trade Association and the office of President of the Benevolent Society of the Scottish Licensed Trade.

Q1. 1. Which of the following best expresses your view of establishing a statutory Scottish Pubs Code and Scottish Pubs Code Adjudicator? Please explain the reasons for your response.

I know from my experience that the tenanted house model, although not perfect, represents a first class, low-capital-requirement entry point for inexperienced licensees and the more mature publicans who cannot find access to funding in order to acquire free-of-tie premises. Moreover, progressive companies such as Montpeliers Edinburgh Limited (where I have been, and remain, Chairman for about 20 years now) benefited hugely from the opportunity to take on the tied tenancy of the Iguana Bar (for a period of more than 10 years) at a time when Montpeliers had limited access to funding to purchase a freehold. It is my view that the proposed Bill will deter landlords from using the tenancy model. It only works for the landlord if there are two sources of income, rent and supply profit on beer products. In return, the landlord provides the capital to purchase the property and contributes significantly to required development costs, as well as providing (in most cases) an extensive range of wet products in addition to counsel and advice on catering development, business management, licensing issues, training and motivation of staff, health and safety legislation and many other matters.

A floor level of an arbitrary number of pubs (500 in England) makes a mockery of the logic behind the bill. It never ceases to amaze me why politicians continue to make the same old errors. The Supply of Beer Orders 1989, which precluded brewery businesses from owning more than 2000 pubs, spawned the birth of the property companies which have been the subject of many complaints about their tenanted house methodology from a variety of sources. The legislation reduced the opportunities and choice for potential tenants.

The Bill fails to deal with investment and makes no mention of another major type of licensee---who is tied to a single supplier under the terms of a loan contract. If the proposal is accepted in its present form, it will spawn the growth of the loan tie between big-brand brewers and MRO tenants. These brewers in most cases offer a very restricted brand portfolio compared to the wide choice available from pub landlords. Consumer choice will decline. The total lack of reference to, or consideration of, loan ties means that the Bill will have unintended consequences. Loan ties are much more common in Scotland than in England. The promoter of the Bill must address this issue, just as he needs to put forward a much more balanced account of the benefits to the licensee of securing the right to trade in attractive properties into which their initial investment is small and affordable. Neil Bibby has totally ignored the massive investment made by property owners and THEIR requirement to service the borrowings which are taken to acquire and develop licensed premises. If landlords are denied the right to a wet stream of income, tenants will have to fund their own development costs in the future and, with no heritable security to proffer, they will have to borrow from the brewers rather than the banks. So, the legislation's consequence may well be that property-beer-ties will be replaced by brewer-loan-ties. Since such loans bear interest and the capital has to be repaid, will tenants with a MRO agreement derive any more free cash flow from their business than the property-tied tenants? I doubt it. But I do know that the proposer of such a Bill as this has a duty to fully understand the machinations of the funding structures available in the Scottish licensed trade. I think a lot more research is required before his proposal can be considered by Holyrood. And the research must include the pros and cons for the landlord as well as the tenant.

Another area that needs researched is the differences between Scots And English law of landlord and tenant. I am not up-to-date on this but historically English lessees and tenants have had greater rights of security of tenure than their Scottish counterparts. A further difference between England and Scotland is that most tenanted houses down south have accommodation attached whilst most in Scotland are "lock-up-shops". Scottish contracts between landlord and tenant are generally for quite short periods of time and tenants who do not wish to renew ( perhaps partly because of the beer tie in some cases) do not face the upheaval of finding a new home, new schools etc for the family.

As I said above the tenanted sector is far from perfect and I do feel that one of the main reasons for the pressure on tenants (and landlords) is that many of the houses which are operated under the tenanted model are just too small, often located in tenement properties, and do not offer scope for expansion and development. Pubs which cannot create a decent food offer and are simply small "boozers" have had their day. The supermarkets and the "superpubs" ( eg J D Wetherspoon) have seen to that. The analogy with the grocers is pretty obvious.

Changing to MRO will not impact on the issue of pub viability. When I was running Belhaven we had our share of struggling boozers and we flexed our arrangements with tenants to try to ensure that there was an even/fair divide of the spoils, such as they were. We chose to do this by REDUCING rents. Rent is a fixed cost to the tenant, beer price spend is a variable expense, dependent on volumes of sales achieved. There is no pint in making concessions on a variable cost if the key issue is that the "supermarkets are destroying the corner shops" or new competition in the locality has hit hard. The businessman tenant wants to know that the concession granted will not be eroded by falling volumes. On top of the rent reductions, we held our prices on our beers for several years during the tough recessionary conditions experienced during my watch.

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Moreover, as the better quality licensed businesses move more into food-led strategies, MRO does not favour the tenant, it is more to the advantage of the landlord.

I firmly believe that legislation on this issue is not necessary. Landlords are not stupid. They know that their licensees must earn a decent living if their own income is to be sustained. Transparency of income on both sides is fundamentally important to the future of the tenancy and the Voluntary Code could be strengthened to include further obligations on BOTH parties, before and after contracts have been signed.

It is my opinion that commerciality will prevail over legislation such as this proposal which will create an uneven playing field. To revert to the Supply Of Beer Orders 1989 the aim of Lord Young was to weaken what was perceived to be a monopoly of the "big six" UK brewers. Brewers were not allowed to own more than 2000 tied pubs. The result was that 5 of the 6 said brewers sold their beer businesses to foreign owners (Guinness was the exception as it did not own any pubs at that time) and the mega property companies (eg Enterprise and Punch) sprang up and dominated the landscape of the tenanted house for many years thereafter. At a stroke, Lord Young who had failed to visualise the unintended consequences of his legislation, had DESTROYED the BRITISH beerage at a stroke and created the dominance of the mega property mogul in the UK licensed trade.

It is absolute folly to say that Scotland must legislate to copy the 2015 Act in England. There is no "one size fits all solution" for the UK and there are many differences between Scotland and England. Mr Bibby should heed the outcome of the Scottish government who, after much research into this subject, concluded in December 2016 ( only three/four months ago) that the evidence collected did not suggest that any part of the pub sector in Scotland was unfairly disadvantaged".

Surely it would be wise for Mr Bibby to take stock of the impact of the Voluntary Code in Scotland and indeed the impact of the 2015 Act in London.

If he is going to introduce legislation which impacts on SOME landlords and SOME tenants, wouldn't he be wise to interview the landlords who will be affected and the tenants who will NOT be affected so that he can get a grasp of both sides of the argument and thus avoid unwanted unintended consequences? And give a BALANCED view to his colleagues in Holyrood.

Finally, according to the government website there are more than 348,000 small businesses in Scotland. This bill would impact on about 0.15% of them. And that's before businesses who suffer from the consequences of the Bill adapt their strategy to recoup lost income elsewhere. Surely Holyrood should be focusing on issues which have a much more relevant potential impact on the general prosperity of the economic backcloth north of the border?

Q2. 2. Could the aims of this proposal be better delivered in another way (without a Bill in the Scottish Parliament)?

Unsure

**Please explain the reasons for your response.**

I have no real issue with the Code being statutory providing that the substance, implementation and control of the Code are properly articulated and communicated and that the MRO option is excluded for the reasons already stated. If the Code does not apply to all tenanted houses, it will establish a very uneven playing field for licensees. Those licensees renting from small-property owners will be disadvantaged. A voluntary code would I think be better but I appreciate the difficulty in getting commitment to it across-the-board.

Q3. 3. What do you think would be the main advantages, if any, of establishing a statutory Scottish Pubs Code and Adjudicator?

I don't think it is necessary at all. In the short term it may advantage some existing tenants to "get a better deal" but in the long run there will be significant unintended consequences for the trade and for consumers. The better tenanted pubs will become managed pubs and the bottom-end tenancies will be de-licensed and sold for alternative use. Loan ties will replace property ties, tenanted house lets will become shorter, and consumer choice of beer products will decline.

In short, it is human nature to re-shape one's business if artificial restrictions are applied to it by legislators.

Q4. 4. What do you think would be the main disadvantages, if any, of establishing a statutory Scottish Pubs Code and Adjudicator?

I have already outlined the disadvantages.

Q5. 5. Which of the following best expresses your view of establishing a Market Rent Only option for tenants as part of a Scottish Pubs Code?

Fully opposed

**Please explain the reasons for your response**

See previous answers.

Q6. 6. What do you think of the proposed contents of the Bill and the Code, and the scope of the Adjudicator's powers, as detailed on pages 17-18 of the consultation document?

Unnecessary.

The proposer of the Bill uses figures provided to him by a consumer group to underpin his arguments for this Bill.

What communication has there been between the proposer and landlord or tenant groups to establish the financial status of tenants. If CAMRA's figures are correct, why would tenants not simply seek jobs in the licensed trade instead of working all hours for less than a pittance.

Proper research is urgently required!!

In my 34 years in the licensed trade I had the pleasure of , firstly. helping many a young licensee take his first step on the ladder as a tenant and, secondly, watching that same young tenant acquire his first free of tie premises, often going on to be a multiple owner of a range of freehold premises. This Bill will kill good opportunities in the future. It will discourage landlord investment and Scotland will end up with a second rate tenanted sector propped up by loan ties from supplying brewers.

Where is the proposed code for loan ties? Do borrowers get terms of supply which are any better than tenants? The proposer of the Bill has completely ignored this aspect of the trade.

Is the next step to introduce legislation to prevent brewers from including supply agreements when lending to publicans? That would soon put an end to that source of funding for licensees, just as the 2015 Act and the Bibby proposal will result in a gradual decline of tenanted property opportunities.

Has the proposer of the Bill considered the relative Scots/English laws on security of tenure? I am not up-to-date on this but historically the legislation differed materially.

Q7. 7. Which of the following best expresses your view of the Scottish Pubs Code Adjudicator being able to impose financial penalties for breaches of the Code?

Unsure

**Please explain the reasons for your response.**

Unsure. I would like to learn from the experience so far in England. Has this been researched? My contacts in the trade say that Adjudicator performance has been inconsistent and highly arbitrary but I have seen no concrete evidence.

Q8. 8. In terms of who the Scottish Pubs Code, and Market Rent Only option, should apply to, which of the following best expresses your view? If you choose option (a) you will automatically be taken to question 10. If you choose (b) or (c) you will automatically be taken to question 9.

**Please explain the reasons for your response.**

Whatever Code is introduced, if one is introduced, should apply to all businesses in the tenanted sector. There should also be a Code for loan ties. Why differentiate between the two? The tenant does not need to agree to a legal contract any more than the borrower needs to agree to the tie in his/her loan contract. The problem with this proposal is that it completely fails to deal with the matter of investment into pubs and the cash required to pay interest on, and capital repayments of, monies borrowed to finance the cost of purchase and the subsequent development costs. The free trader has to buy his/her premises which will require personal investment of about 40% of the cost. That debt has to be serviced. The tenant only pays rent, usually about 7% of capital cost. The free trader NEEDS to buy beer at cheaper prices than the tenant in order to achieve the same free cash flow from his business. How effectively the free trader can buy beer depends on whether or not there is a loan-tie. The tenanted model does not work for the landlord if there are not two streams of income. The landlord has to repay the bank too. The landlord meets most of the cost of ongoing redevelopment of property, the trading benefit of which is primarily to the benefit of the tenant. Again, that second tier of investment incurs borrowing which has to be serviced.

Q9. 9. How should larger pubcos be defined (e.g. by size of turnover, number of tied pubs owned in Scotland (if so, how many, etc.))?

Setting an arbitrary limit is a nonsense.

It will have unintended consequences.

Either there is logic to the Bill or there is no logic. Why would the bill help a tenant who is in premises owned, say, by an 9 pub estate landlord who has a next door neighbour whose pub owner has 11 pubs and the proposer has set the floor level for the tie at more than 10 pubs? The Bill would create an artificial market.

The consequence is of course that the landlord with 11 pubs will sell one to his competitor with the 9 pubs.

If say you set the floor level at 50 pubs then how many tenants will remain tied because their landlords are below the threshold? How do you think they will feel?

It seems from your paper that you have no precise figures for pubs owned in Scotland, other than the total figures. Surely it would be sensible to get your facts established before asking people to comment on your proposal.

How are you going to monitor pub numbers in the future to decide whether or not your law applies to certain companies and whether or not they should be charged a levy to fund the cost of adjudication.

If you go by turnover, do you mean the turnover from tied pubs or their total turnover. Companies such as Punch, Heineken, GK Group etc have huge turnover derived from activities other than tied tenancies.

## Page 17: Financial implications

Q10. 10. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

	Significant increase in cost	Some increase in cost	Broadly cost-neutral	Some reduction in cost	Significant reduction in cost	Unsure
(a) the pub companies which own tied pubs (Pubcos)						
(b) Tied-pub tenants						
(c) Tied-pub customers						

**Please explain the reasons for your response**

Pub cos will have less income and will convert the better pubs to managed. They will sell off a section of their tenanted estate to a range of pub owners below the threshold. Many houses will be sold to small landlords below the threshold or sold to individual licensees who have little capital but will be funded by hungry big-beer-brand owners who will flex their loan tie muscles. The consumer will not benefit through lower prices as, according to the CAMRA research on which this Bill is predicated, the tenants will need any extra income to get across the bread line. It's not about cost. It's about opportunity and consumer choice. Your proposal states that property companies do not offer their tied tenants a decent range of beer products. What research have you got to support that statement? Have you bothered to look at the product lists of the property companies? If not, please do so. You will find that the choice is extremely extensive covering products from all parts of the globe. If you implement this proposal, property companies will stop investing into their tenanted estate. Tenants will need to borrow to make improvements. Their sources for borrowing will be restricted to supplying brewers, as they have no registerable property security to offer to banks. Supplying brewers are likely to have a more restricted portfolio of beers to offer to loan tied customers, compared to the portfolios of the property companies who deal with most of the key beer suppliers in the country, north and south of the border. So, choice for licensees and their customers is likely to reduce----definitely not increase for tenants who require to borrow.

Q11. 11. How do you think the associated costs of the proposal (predominantly the establishment and on-going running costs of a Scottish Pub Code Adjudicator) should be funded?

What is the cost of it? Your paper leaves that question unanswered.

It is ridiculous that you are contemplating setting up an entire office to deal with contractual matters relating to a handful of property owners and their tied tenants.

You refer to England where the cost of an office is spread over a large no of pubs. The cost per pub in Scotland would be significantly greater than the cost per pub in England.

To assign the cost to a handful of property owners would only serve to accelerate the unintended consequences of this proposal ie the shrinking availability of pub tenancies for first time entrants and other publicans who have insufficient capital to purchase their own premises.

## Page 19: Equalities

Q12. 12. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation?

Unsure

Q13. 13. In what ways could any negative impact of the Bill on any of the protected characteristics be minimised or avoided?

Delete MRO clause.

Introduce a parallel code for loan ties. .

Avoid floor-level thresholds.

Research evidence re tenant income comprehensively.

Research landlord intentions if you introduce an unfair, unlevel playing field.

## Page 21: Sustainability of the Proposal

Q14. 14. Do you consider that the proposed Bill can be delivered sustainably, i.e. without having future disproportionate economic, social and/or environmental impacts?

No

**Please explain the reasons for your response**

Please see earlier responses.

## Page 22: General

Q15. 15. Do you have any other comments or suggestions on the proposal?

No

Thank you for canvassing relevant views.

I hope my submission is helpful in providing a more balanced view of the issues to the politicians who will be determining what course of legislative action is required.