

# 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".)

Member of the Public

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 would like this response to be anonymous (the response may be published, but no name)

Please provide your name or the name of your organisation

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.

Partially opposed

**Comments:**

I believe the tied model gives more individuals access to the pub industry allowing entry to a business with lower in-goings. Of course the beer prices are higher than on the open market but this is off-set by lower rents, lower required in-goings, support from the pubcos both in set up and on-going professional support and, in the case of the more reputable pubcos (Punch, Star Bars etc) ensuring relevant pre training is in

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.

place. Whilst the idea of an adjudicator seems fine in principle there have been numerous issues raised following the introduction of a similar bill in England & Wales where numerous publicans, including a significant group of multiple operators have cited the code as being too complex and not fit for purpose. The introduction of such a code could lead to more red tape and ultimately higher costs making this route to market more difficult for the smaller independent free traders. A knock on effect of which could be fewer publicans holding a larger number of pubs hence restricting competition in a whole different way.

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.**

Whilst regulation in any sector that restricts the ability of a large company to take advantage of an individual, or which encourages more fair competition is a good thing this seems like regulation for regulation's sake. I understand the total number of pubs who completed the MRO process in England & Wales in its first year was 8. This is despite there being several thousand pubs on such a model. Ensuring pubcos are regulated to ensure they fulfil their responsibilities prior to signing up a tenant seems a far better option. e.g. Ensuring proper pre-entry training is provided (ideally for free), ensuring the tenant has taken correct legal advice, ensuring a fully costed business plan is in place, utilising an independent and registered assessor to establish a fair rent etc. If the pubcos are forced to be more transparent at this stage then prospective tenants are less likely to sign up to a deal which they don't fully understand. If the pubco then breaks its contractual agreement within the terms of the tenancy then an adjudicator to rule on this is not necessarily a bad idea.

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

Ensuring fairness for both parties.

For the reasons stated in Q2 it is clear the tenant has to be protected but at the same time the larger and more responsible pubcos have been changing their ways over recent years.

There is a stigma attached that these companies are only out to exploit tenants and to make profit without consideration for the average pub goer. This is simply not true. A system where it can be shown that the pubcos are acting in a fair and reasonable manner can only be of benefit to all. This is not necessarily the role of an adjudicator however, and could be argued to be the responsibility of the pubcos themselves.

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

That depends entirely on the scope of the code and powers of the adjudicator.

This is an emotive and politically charged subject. If at the onset the premise is to police the Pubcos then the risk is that legislation and the code becomes so complex as to be unenforceable. Look at the code in England & Wales right now, only this week 12 multiple tied operators wrote the parliament pointing out "This [legislation] was made complicated by opaque, unintelligible regulations that demonstrate a lack of understanding of the process of landlord and tenant relationships, compounded by unrealistic implementation dates all of which led to uncertainty of application. The PCA was put in place to regulate and adjudicate the process in a fair and expeditious manner. Neither the Pubs Code, nor the PCA have delivered so far and after a year, we are not aware of a single case that has successfully navigated the PCA to arrive at an adjudication."

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?

Partially supportive

**Please explain the reasons for your response**

I don't see any issue with this in principle. As long as it remains an option and is not mandatory. For many prospective tenants the only route to market is via the tied model due to lack of funds on their behalf.

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?

Don't know, haven't read this page.

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?

Partially supportive

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

I support this assuming the regulations can be made clear enough.

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.

(a) The Scottish Pubs Code - including the Market Rent Only option - should apply to all tied pubs in Scotland

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

I'd argue that due to greater exposure the larger pubcos tend to act in a more responsible way towards their tenants. The costs to their business and reputation ensure this. Were this regulation only aimed at the largest pubcos then it becomes difficult to argue that this is nothing more than an exercise to punish the larger and more profitable pubcos and extrapolate as much from them as possible via fines.

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.))?

*No Response*

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)		X				
(b) Tied-pub tenants		X				
(c) Tied-pub customers			X			

**Please explain the reasons for your response**

Pubcos: additional costs in terms of training staff. Recruitment of expertise (eg in-house expert). More difficult and lengthy recruitment process. Tenants: Longer selection process. Less support for tied agreements. No financial support for MRO agreements (eg beer deliveries being given on credit when cashflow is restricted) Customers: Publicans will still charge what the market will sustain for a pint. They will not pass savings they make directly onto customers. Many publicans without significant market knowledge will potentially end up paying more for some products.

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?

Scottish government

## 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?

Neutral (neither positive nor negative)

**Please explain the reasons for your response**

Don't see why this is relevant

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

*No Response*

## 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 Response*

## Page 22: General

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

*No Response*