

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 supportive

Comments:

I understand that there are misgivings but I am concerned that the Scottish system of leasehold and the lack of security of tenure beyond the term of the lease may result in unintended consequences.

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'm inherently suspicious of legislation and it's too early to judge how this is playing out in England and Wales. There are concerns there about the adjudicator being a former Pubco director.

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

In theory licensees would have a relatively easy means of bringing clarity to disputes under tied leases.

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

I'm concerned about the leverage that Pubcos would retain with regard to security of tenure. Under a Scottish lease the landlord can serve notice to quit at the end of lease without any recourse. I can see a situation where a tenant has successfully taken a dispute to the adjudicator and the landlord takes the opportunity to take back the premises at the end of a lease, leaving the licensee without a job. The Pubco simply reinstates the previous unsatisfactory arrangement with a new tenant.

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

Market rent is difficult to determine given the difference in premises and the effect of location, clientele and management on profitability.

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?

They look as if they take no account of the matters that I have mentioned in previous answers.

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?

Neutral (neither support nor oppose)

Please explain the reasons for your response.

I'm inherently unhappy about any financial punishment. Pubcos have the leverage to make legal challenges and for precedents to be set. The levels of penalties are unlikely to be severe enough to effect behavioural change. For example, people complain about parking charges but it doesn't stop them parking illegally when they feel that they need to.

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.

Again I'm wary of unintended consequences. Pubcos are sophisticated enough to take avoidance measures if there is differentiation.

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

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

Please explain the reasons for your response

There is unlikely to be an effect on the retail price of drinks. This is determined by local markets and the type of establishment concerned. In theory the tenant should be able to make more money with a fairer bricks and mortar rent and less punitive wholesale costs, whilst maintaining the retail price.

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?

The establishment costs are presumably an embedded civil service cost. If civil servants aren't working on the Code they'd be working on something else, or isn't that how it works?

I'd be keen to keep the adjudicator costs as low as possible with a small fee for applications for adjudication and a small team of administrators. The cost balance would need to be publicly funded.

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

Please explain the reasons for your response

In theory there should be no impact. However it's impossible to tell how the adjudicator will react and what cases will involve equality issues. For example a female licensee could bring forward a case that she is being unfairly dealt with for gender reasons.

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?

Unsure

Please explain the reasons for your response

See my earlier answers

Page 22: General

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

Overall, the idea that Pubcos should be more responsible is an attractive one, but there are all sorts of factors of market forces that affect how the current situation has developed, including licensees being badly advised or taking on contractual obligations without being fully informed of the risks. It's inevitable that a market will push as hard as it can where there are vulnerabilities to exploit and I agree with the principle of restraining the push for more by introducing fairness. It's disappointing that there is not wider legislation relating to unfair contracts that could deal with these situations.