

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

## Page 2: About you

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

on behalf of an organisation

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".)

*No Response*

Please select the category which best describes your organisation

Representative organisation (trade union, professional association)

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

The Scottish Licensed Trade Association - Colin Wilkinson

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 supportive

**Comments:**

The Scottish Licensed Trade Association is, in principle, supportive of the introduction of a Scottish Statutory Code of Practice and an independent adjudicator to govern the Pubco/tenant relationship in Scotland. The Code must be detailed, universal and comprehensive to avoid misinterpretations. Pubs and Bars in Scotland are currently facing unprecedented difficulties in the current economic/business climate and tenant licensees have the additional challenge of operating in this environment with, in the majority of

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cases, their Pubco landlords creating an unfair, uncompetitive marketplace for this sector which leads to a serious effect on the economy and the fragile health of the licensed trade industry. Just after the Small Enterprise Bill was passed by the Westminster Parliament in 2014, which confirmed the liberation of tied pubs in England and Wales, a catalogue of research was compiled highlighting that:-

- Based on performance over the previous two years, tenanted pubs across Scotland were sixty-two times more likely to close than their free trade counterparts.
- 74% of Scottish publicans felt worse off as a result of the tie, and more than 96% believed that paying a reduced rent didn't fully take into consideration the extra cost they would bear on tied products and services.
- 99% of publicans wanted the same level of protection as being introduced in England and Wales.
- 97% of tenants believe that the reduced rents do not offset the increased prices they pay on beer etc.

The introduction of the statutory pubs code in England and Wales has left Scotland's tenant licensees in a very vulnerable position. This sector needs similar legislation in Scotland to ensure that pub tenants get a fair deal and that they are no worse off than a free-of-tie licensee. The only way to ensure that Pubcos do not exploit their tenants is for the Scottish Government to introduce a robust code of conduct and appoint an adjudicator to enforce that code and ensure that Pubcos are not exploiting tenants.

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

No

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

The relationship between Pubcos and Tenants has always been a UK wide matter. Whilst the Association recognises that this is a devolved matter to the Scottish Parliament, it seems inconceivable that, with a statutory code of practice in force in England and Wales, only a discriminatory "two-tier" level of protection and recourse would be offered to tenant licensees in Scotland through the Scottish Beer and Pub Association's Voluntary Industry Code. It must be remembered that this voluntary code was supported by 6 of the larger Pubcos/brewers and is similar to those used when industry self-regulation was attempted in England and Wales. The Scottish Beer and Pub Association represents pub companies and brewers, but not individual tenants of pub companies. Tenants with valid concerns either have no awareness of the self-regulatory system or little confidence in it.

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

The introduction of a Statutory Code and Adjudicator will enshrine the principle of fair and lawful dealing which should be a central part of the Statutory Code. The principle of fairness should also encompass a rebalancing of the information and knowledge available to tenants, who often feel overpowered by the technicalities and information that is readily available to the pub operating companies and as a consequence often leads to the belief that there is no alternative solution other than that being proffered by the pub company.

The introduction of a Statutory Code will also ensure that tied tenants in Scotland are no worse off than those that are free of tie, and bring legislation into line with that in England and Wales. The introduction of a statutory Code and Adjudicator will ultimately improve the Scottish pub sector for everyone.

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

None.

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 supportive

**Please explain the reasons for your response**

The introduction of the Market Rent Only (MRO) and parallel rent assessment will provide Scottish tenants with a fair and transparent review of the true rental value of their property; the ability to pay a non-discounted dry rent for the property and the ability to purchase products and services on the open market. As previously stated with 2 in 3 Scottish publicans living below the UK Living Wage; 3 in 4 believing they are worse off as a result of the tie; 97% believing that the reduced rents do not offset the increased prices they pay on beer; and 99% wanting the Scottish Government to act to ensure that the same protections afforded to English tenants are extended to Scottish tenants this is a popular measure that is widely supported by those wanting a fair deal for Scottish tenants. Additional benefits of a MRO option would be that Pubcos would be incentivised to act in a competitive manner and make their tied deals fair and attractive, as failure to do so would result in a high proportion of their tied licensees choosing to become free of tie.

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?

We would agree that the contents of the Bill and the scope of the adjudicator's powers are appropriate, but it is essential that the adjudicator must have ability to impose penalties for breaches of the Statutory Code.

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?

Fully supportive

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

Whilst the Adjudicator should have this power, the option of alternative enforcement action, such as imposing a smaller fine than the maximum, or asking a pub company to provide undertakings as to future conduct in lieu of a financial penalty should be available. However, in order to provide a true deterrent, the Adjudicator must be able to impose substantial penalties on companies found to be in breach of any Statutory Code.

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.**

The Association's policy is that a Scottish Code of Practice should be binding on all tied pubs in Scotland. In recent times companies have "split" or set up a different "divisions" within the company and we are of the opinion that, from a Pubco perspective, it could be beneficial for a company "split", drop below any set minimum level and fall out with the scope of any Code of Practice. Parallels can be drawn with the introduction of the "Beer Orders" in 1989. The Orders restricted the number of tied pubs that could be owned by large brewery groups in the United Kingdom to 2,000, and required large brewer landlords to allow a guest ale to be sourced by tenants from someone other than their landlord. The industry responded by simply spinning off purely pub-owning companies ("Pubcos"), such as Punch Taverns and Enterprise Inns, from the older brewing-and-owning companies and then "supplied" the newly formed

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Pubcos with their beer. The Beer Orders were revoked in January 2003, by which time the industry had been transformed and basically nothing positive had been achieved for tenants. It would obviously not be desirable for Pubcos to do the same in respect of any Statutory Code of Practice. In more recent times certain banks have had to "split" their business – perhaps inadvertently this may encourage Pubcos to follow suit and cognisance should be taken of this in any future Scottish Pubs Code.

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

(a) Pubcos do not invest more in their tied tenants, but receive funds from the tied estate through inflated costs for products and services. If tenants could free themselves from these agreements, they could then pass savings on to the consumer. (b) The implementation of a Scottish Pubs Code and Adjudicator could result in significant savings for tied pub tenants. Through the provision of the MRO option, tenants could reduce the costs of drinks, good and services considerably as they will be able to purchase them on the open market. (c) Due to decreased rent and goods, costs for tied tenants under a Code and with caps on increases in tied goods and services and provision of the MRO option, tied tenants will have the opportunity to pass on cost savings to consumers.

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?

Following the example of the Pubs Code Adjudicator for England and Wales, the establishment and running costs of the Adjudicator's office should be paid for through a levy on the pub owning companies which the Scottish Code and Adjudicator would govern. In addition companies breaching the Statutory Code would incur financial penalties from the Adjudicator.

## 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**

We do not see the proposed Bill having any overall impact on the Equality Act 2010.

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?

Yes

**Please explain the reasons for your response**

Considering the number of pubs closing due to disposal by Pubcos and the current situation tenant licensee in Scotland find themselves, the introduction of a Statutory Code can only be a positive step forward.

## Page 22: General

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

No further comments or suggestions to add.