

# 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 Tourism Alliance

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:**

Many pubs in Scotland are struggling because pub companies are taking more than is fair or sustainable from tied licensee's profits. Licensees are being forced to buy the beer they sell from the company they are tied to rather than on the open market. This means that licensees can pay over 50% more for beer than they would on the open market, and that they are often paying above market value for rents. As a result, many licensees are struggling to make a living, contributing the rate of pub closures in Scotland, which

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currently stand at one per week. Tourists come from across the world to experience our food drink and great hospitality and having a continued closure of Pubs at this rate is exceptionally concerning as it further reduces the opportunity to have that choice experience they seek.

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 licensed trade requires legislation to ensure vulnerable businesses are protected against large pubcos who take advantage of them. As the industry is unable to police itself, the Scottish government must act. Westminster has legislated progressively on the issue and Scottish businesses deserve the same protection. While the Scottish Beer and Pub Association re-launched their voluntary Industry Code in July 2016, with 6 of the larger pub companies signed up to it, the Code is very 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 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 between Scottish pub companies and their tied tenants in law. This will 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, where a Statutory Code and Adjudicator have been in force since July 2016.

As highlighted by colleagues at the SLTA It is vital that tied tenants in Scotland are allowed formal access to redress in the event of unfair treatment by their pub company, and are able to obtain fair contractual terms for the supply of beer and rents in line with market values. Allowing tenants to purchase beer from whoever they choose would also be a massive boost for the brewing sector in Scotland which is currently disadvantaged by the tie.

The introduction of a statutory Code and Adjudicator will ultimately improve the Scottish pub sector for everyone including brewers and small producers who have their access to market blocked through tied arrangements.

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

We can not foresee any 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 supportive

**Please explain the reasons for your response**

Rents offered alongside free of tie agreements are at a fair, open market rate to ensure that the principle that a tied licensee should be no worse off than a free of tie licensee is achieved. Among the benefits of a

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?

Market Rent Only 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. The provision of a Market Rent Only option will allow licensees to substantially increase their profits, and enable them to reinvest money in their businesses, boosting the quality of pubs in Scotland and the local economy. This will apply to both licensees who seek a Market Rent Only option, and those tied tenants who see the terms of their tied contracts improved as pub companies are incentivised to offer more attractive tied deals. A Market Rent Only option will also help improve consumer choice, and benefit smaller brewers who will be offered more routes to market as tied licensees will no longer have stocking requirements imposed and be able to purchase beer at market cost. This will increase the variety of beer on offer to consumers, and allow licensees to stock locally produced, high quality real ales. The National Tourism Strategy Tourism Scotland 2020 is focused on the delivery of authentic memorable experiences in every aspect of the customer journey thus having the opportunity to sample choice options of Scottish Food and Drink in all food pubs is preferable. The 2030 Food and Drink strategy also aspires to achieve £30billion revenues and a key thrust of this is through food and drink focused tourism- Pubs therefore being central to this

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 seem appropriate

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.**

In order to provide a true deterrent to pub companies found to be in breach of the Code, the Adjudicator must be able to impose financial penalties for breaches. This is in line with the Adjudicator for England and Wales, who has the power to impose fines of up to 1% of the turnover of the pub companies concerned. Putting in place a power to impose financial penalties is the only way to ensure that the Adjudicator has the necessary influence within the industry to deter breaches in the first place, and prevent repeated breaches for the same reasons at a later time. It is also worth noting that while the Adjudicator should have this power, it does not preclude the Adjudicator choosing to take 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, and if the undertakings are not fulfilled then the financial penalty can be levied promptly.

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.

*No Response*

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**

Pubcos. These business do not necessarily invest in money into their tied tenant outlets, but do in many cases reported receive funds from the tied estate through passing on inflated costs for products and services. If tenants could free themselves from a tied agreement and make savings through open untied procurement they could in turn reflect these savings into the on cost of product to the customer making the business more attractive and competitive.. Tied Pub Tenants 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. Tied Pub Customers 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 be able to pass on cost savings to customers

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?

As with 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.  
This is an entirely proportionate measure, which provides financial motivation for pub owning companies to avoid breaching the cost, thus incurring financial penalties from the Adjudicator (which CAMRA is proposing that the Adjudicator should have the power to impose).

## 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**

The proposed Bill will have no overall impact on equality as defined under 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**

Yes potential number of pub closures would reduce due to disposal by pub company

## Page 22: General

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

*No Response*