

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

No Response

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 pubco business model is harmful to the pub trade and is not in public interest for it to continue any longer. Pubcos, both small and large, do not do anything economically useful in the country but yet they make millions in profits. Low income tied tenants are often left in receipt of state benefits, in-necessarily. Another words, the tax payer is footing the bill. There's no need for a pubco business model (as

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.

middlemen) in the pub trade. The success of the pub owners as middlemen, is only derived from their ability to exploit the supply chain from Brewers to pubs. Pub property owners (both small and large) have planted themselves in between the Breweries who produce the products and the Pubs who provide the hospitalities to their customers and in doing so are able to commercially exploit both ends. It is in the public interest. for a number of reasons, for government to act to abolish the beer tie, to enable pubs as small local business to flourish once again.

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.

There's no alternative to legislation. The pubco business model which can come in many guises, shapes and formats, will always seek to exploit the fruit of other people's labour, will seek to restricts consumer choice, and will seek to impose artificially inflated drinks prices at the bar. For more than a decade, the pub owners have continued their profiteering apace, with impunity and urgency. The Westminster government was left with no choice but to legislate to halt the pubco commercial excesses. The Scottish pub tenants are in urgent need of similar protection.

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

There's an urgent need for a well drafted legislation, which will provide the following benefits to all:

- 1- It will stop the commercial exploitations of hard working self employed publicans.
- 2 - It will restore the ethos of free market economy, so that a tied tenant may not be worse off than a free of tie tenant.
- 3- It will provide new business opportunities within the hospitality trade, when current exploitations are stopped.
- 4 - It will increase consumer choice at the bar.
- 5 - It will lower prices consumers have to pay.
- 6 - It will enable pubs as small businesses to flourish, creating more jobs.
- 7- It will reduce dependence on state benefits by low income publicans due to high rents and beer prices.
- 8 - It will reduce pub closures, saving jobs and local amenities.
- 9- It will provide local and regional brewers with access to pubs to market their products and to expand operations.
- 10- It will allow local people to buy their local pubs and make local investments.
- 11- It will enable pubs to diversify in their individual ways to better cater for the needs of their local population.
- 12- It will provide assured tenancy, so that there's an automatic right to renewal of lease after 12 month.
- 13- It will protect all pub tenants irrespective of the number of pubs the pub owner may have, starting with one pub.
- 14- It will provide protection to pub tenants on agreements longer than 12 month.
- 15- It will protect the right of the tenant to pay no more than the open market rent.
- 16- It will protect the right of the tenant to buy and stock any product, bought at open market prices.
- 17- It will protect the right of the tenant not to share any other income stream with the landlord.
- 18- It will protect the right of the tenant to source his own building insurance at open market prices.
- 19- It will protect the right of the tenant to meet up with any brewer or drinks supplier without pub owner approval.
- 20- It will protect the right of the tenant to have his Lease Deposit Bond ring fenced and held in a secure interest bearing account.
- 21- It will protect the right of the tenant not to be coerced and intimidated, or treated unfairly by the pub owner.
- 22- It will protect the right of the tenant to have quiet enjoyment of the lease, stopping frequent unannounced visits by pub owners.

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

- 23- It will protect the right of the tenant to allow access to the owner by prior arrangement.
- 24- It will protect the right of the tenant to a fair rent review.
- 25- It will protect the right of the tenant to manage the business in an independent manner, without undue interference from pub owner.
- 26- It will protect the right of a new tenant to transparency of all financial details of the pub.
- 27- It will protect the right of the tenant to require rent review at any time if material change in trading performance has occurred.
- 28- It will require the pub owners to ensure new tenant has the necessary background experience to manage the business.
- 29- It will protect the right of the tenant to have his lease deposit money refunded with 14 days of departure.
- 30- It will protect the right of the tenant to buy his pub, when the pub owner decides to sell.
- 31- It will protect the right of the tenant not to be required to buy any other items from the pub owner.
- 32- It will abolish Supply Tie.
- 33- It will abolish upward-only rent review.

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

Currently, one of the main attractions of buy a pub to let schemes is the pub owners expectation that charge a much higher rent levels, just because the property happens to be a pub. Consequently, the pub owner have the irresistible urge to aim for astronomical levels of rent. This amounts to opportunistic commercial exploitation of tenants. It's an unfair practice. Legislation is required to insist on fairness, and to protect small business. One pub owner once told me that, when looking to buy a pub to let, they did not care how much they had to pay to buy it. This is because they can borrow as much as they want. IF they borrow say £300,000, then the rent is set at £30,000 pa IF they need to borrow say £400,000, then the rent will be simply set at £40,000 pa, to be paid by the tenant. MRO will also serve to stop pub owners to borrow heavily to snap up local pubs, and prevent the locals from entering the pub trade. That would mean that local businessmen would then get a chance to acquire their local pub property, keeping everything local.

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?

I have grave concerns that the Bill WILL NOT achieve the two Underpinning Principles if it merely replicates that of Westminster applicable to England.

The Devil is truly in the details, and some are as follows:

- The Bill must apply to all tenancy agreements longer than 12 month, and not just long leases.
- The Bill must apply to all pub tenancies Irrespective of how many pubs, the pub owner has.
- The Bill must be clear that the tenant is free to choose any range of products stocked, without consultation with the pub owner.
- The Bill must make it illegal for a pub owner to specify or influence brands or products stocked in a pub.
- The Bill must empower the tenant to purchase any product from any source it wishes, without consultation or influence from the pub owner.

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?

- The Bill must make abolish any supply Tie.
- The Bill must allow the tenant to obtain competitive insurance quote for pub owner to match, rather than charging tenants excessive insurance premiums.
- The Bill must entitle the tenant to ASSURED TENANCY after 12 month.

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.

Tenants as small business need protection against pub owner excesses. Pub owners will not be deterred, unless any legislation is swiftly and effectively enforced.

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.

Options B and C will not serve to uphold the underpinning principles of fairness sought by this bill. Also options B and C, could be seen as discriminatory against bigger pub owners, which is not the intention. The one and only intention is to stop commercial exploitations of the self employed, in the hands of the pub owner. The objective of the bill is to enshrine the ethos of fairness in the pub sector, as a whole.

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				

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

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

Please explain the reasons for your response

The above re-allocation of costs and savings away from greedy pub owner, will serve to improve the financial standing of pubs as small local businesses, and help boost the local economy.

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?

Tenants working long hours, some doing 60 hours per week, will not have the time nor the wish to resort to Adjudication.
 Tenants tend to view Adjudication as the last resort and not the first.
 It has to be accepted an average tenant will only take the case to adjudication, if and when the pub owner is not prepared to abide by the law.
 In such circumstance, the pub owner should take full responsibility for associated costs.
 The pub owner can prevent the case going to adjudication, by being fair and compliant.
 However, the tenants will be happy to make a fixed contribution to costs of say £200?

It's important to note that, the clearer the terms of legislation, the lesser the need for adjudications.

Judging by England experience, most adjudications have become necessary because pub owners try to evade legislation using loopholes, and looking to take advantage of legislative ambiguities.

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)

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

Care must be taken to close loopholes such as those left in the English legislation.
 Loopholes will be quickly exploited by pub owners, making the bill irrelevant.
 For example in England, the bill applies only to leases longer than 5 years.
 So the pubcos have been busy forcing tenants holding longer leases to convert to shorter leases so that legislation will not protect them.

The bill must be quite clear on its intentions, including the following 3 points:

- Free of Tie pubs
- Market Rent Only
- Assured Tenancy after first 12 month.

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

The bill will be sustainable if it delivers the fair principles sought by all in a civilised society. Just because someone decides to make a living as a pub tenant, should not make them easy targets for commercial exploitations by pub owner. The government needs to act to prevent exploitations of vulnerable tenants.

Page 22: General

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

The devil is in the detail:

To deliver fairness, the proposed legislation must address the following:

- 1- To stop the commercial exploitations of hard working self employed publicans.
- 2 - To restore the ethos of free market economy, so that a tied tenant may not be worse off than a free of tie tenant.
- 3- To recognise and protect pubs as important local amenities.
- 4 - To increase consumer choice at the bar.
- 5 - To stop current inflated prices consumers have to pay at the bar.
- 6 - To enable pubs as small businesses to flourish, creating more jobs.
- 7- To reduce dependence on state benefits by low income publicans due to high rents and beer prices.
- 8 - To reduce pub closures, saving jobs and local amenities.
- 9- To provide local and regional brewers with access to pubs to market their products and to expand operations.
- 10- To enable local business people to buy their local pubs and make local investments, and retain profits locally.
- 11- To enable pubs to diversify in their individual ways to better cater for the needs of their local population.
- 12- To provide ASSURED TENANCY, so that there's an automatic right to renewal of tenancy after 12 month.
- 13- To protect tenants irrespective of the number of pubs their pub owner may have, starting with one pub.
- 14- To provide protection to pub tenants on agreements longer than 12 month, rather than just long leases, which pubcos have stopped.
- 15- To protect the right of the tenant to pay no more than the open market rent.
- 16- To protect the right of the tenant to buy and stock any product, bought at open market prices, without pub owner permission.
- 17- To protect the right of the tenant not to share any other income stream with the landlord, such as machines.
- 18- To stop the pub owner to charge inflated building Insurance premiums, to make extra profits.
- 19- To protect the right of the tenant to meet up with any brewer or drinks supplier without pub owner approval.
- 20- To protect the right of the tenant to have the Lease Deposit Bond ring-fenced and held in a secure interest bearing account.
- 21- To protect the right of the tenant not to be coerced and intimidated, or treated unfairly by the pub owner.
- 22- To protect the right of the tenant to have quiet enjoyment of the lease, stopping frequent unannounced visits by pub owners.
- 23- To protect the right of the tenant to allow access to the owner by prior arrangement only.
- 24- To protect the right of the tenant to a compulsory and fair rent review.
- 25- To protect the right of the tenant to manage the business in an independent manner, without interference from pub owner.
- 26- To protect the right of a new tenant to transparency of all previous financial details of the pub.

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

27- To protect the right of the tenant to require rent review at any time if material change in trading performance has occurred.

28- To require the pub owners to ensure potential new tenants have the necessary skills before signing them up as tenants.

29- To protect the right of the tenant to have his lease deposit money refunded with 14 days of departure, without undue delay.

30- To protect the right of the tenant to buy his pub, when the pub owner decides to sell, with priority over others.

31- To protect the right of the tenant not to be required to buy any other items from the pub owner.

32- To abolish Supply Tie.

33- To abolish upward-only rent review.