

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".)

Professional with experience in a relevant subject

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.

Fully supportive

Comments:

It is unfair that UK-based firms are allowed to exploit and harass tied licensees in Scotland when such practices have been outlawed in England and Wales - even if the appointment of the E&W Adjudicator has

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.

been botched by the hiring of someone with a terminal financial conflict of interest that many suspect is responsible for his abysmal performance in the role.

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 should have been a legislative consent motion when the [Westminster] Small Business Act was passed. The excuse from civil servants of 'technical reasons' has never been substantiated and is highly dubious.

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

That tied licensees in Scotland will be afforded protection from unfair business practice in an area marked by severe imbalances of power, resources and incomes between landlord and tenant.

Better and more entrepreneurial pubs and fewer pub closures. Advantages that will cascade down the supply chain, benefiting [mostly] Scottish businesses including brewers.

A boost to employment through better businesses able to employ more people.

A boost to thriving communities.

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

A rebalancing of risk and reward would not occur. The only disadvantage would be to pubcos and their lobbyists who employ virtually nobody in Scotland.

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

It is a vital part of rebalancing risk and reward for licensees. While not suitable for all pubs, it would principally enable pubs with high turnover, particularly in draught beer, to offer a full range of products. It would benefit Scottish microbreweries in particular. While no true MRO option has been put in place in the UK due to the failures of the [England & Wales] Adjudicator's office to function, there are examples of free-of-tie deals being done in rare circumstances between pubco and tenant. Anecdotal evidence suggests that the existence of the MRO option in England and Wales has put pressure on pubcos to offer these deals in more cases. The effect on licensees with a high turnover of draught beer is transformative. It means that instead of paying inflated wholesale prices on drinks (squeezing net income and creating artificial inflationary pressure passed on to consumers), and/or having a restricted range of suppliers to

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?

choose from, a pub can choose from a full range of beer suppliers, almost all of which would be Scottish. Its profit margins on a cask would go from virtually nothing to match those found in the free-of-tie sector.

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?

These are a good starting basis. The Act in England & Wales is not perfect, but the Code itself is a robust document. Attempts have been made by pubcos to game the legislation, notably by trying to force licensees requesting a Market Rent Only option to sign a new lease on unfavourable terms (illegal under the Act). That these have not been addressed and the pubcos not punished reflects on the competence and lack of independence of the English Adjudicator rather than the contents of the Code.

There may be benefits in spelling out details of the skills and independence required of the Adjudicator, and also strengthening the reporting requirements which are currently minimal.

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

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 order of preference should be a), then b), then c). Scotland's tied pub sector is different to that found in the rest of the UK, with fewer larger pubcos and a number of smaller operators. Evidence of the 500 limit in place in England is that avoidance takes place [the emergence of narrowly sub-500 estates such as New River Retail], and that the distinction is artificial. The complete failure of self-regulation with barely any Scottish pub disputes making it to PICAS or PIRRS is evidence enough of the need for the Code to apply to all tied pubs, as we know of plenty of cases of appalling abuse by pubcos of Scottish licensees.

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

If the pubcos act more ethically, the 'churning' of licensees which is a serious drain on resources will be eased as their reputations are enhanced. Therefore the impacts for them are broadly cost-neutral.

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?

From a levy on pubcos, as an incentive.

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?

Slightly positive

Please explain the reasons for your response

There is little evidence of the demographics of licensees, but the effects in terms of pregnancy/maternity and disability are likely to be particularly positive.

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

N/A

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 is a win/win and therefore entirely sustainable.

Page 22: General

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

Just get on with it and do it, please!

The Scottish Government 'study' published in late 2016 was one of the worst documents produced by any government in the UK in recent times; an appalling waste of money. The aims of the study and the methodology were deliberately skewed in order to inhibit evidence-gathering of abuse by pubcos of licensees; the sample of tied pubs was so small that in no way would it be considered robust or representative. That document should be put to one side as it does not stand up to any degree of scrutiny.