

# 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 am content for this response to be attributed to me or my organisation

Please provide your name or the name of your organisation

Ray Turpie

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

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 only effective way to regulate the relationship between pub companies and their tenants is through legislative reform as industry self regulation has been ineffective. 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. It is my understanding that no referrals have been made by tenants under the original voluntary Scottish Code. This is because 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. 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. 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?

*No Response*

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**

I am fully supportive of the establishment of a Market Rent Only option for tied tenants as part of a Scottish Pubs Code. A mandatory Market Rent Only option for licensees tied to large pub companies is the simplest way to allow market forces to work, and remove the current disadvantage to tied licensees compared with free of tie lessees. It is essential that 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 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. We would anticipate that as pub companies improve their deals to better compete with new free of tie options, only a small minority of existing licensees would opt to go free of tie. As pub companies improve their tied offers to tenants, consumers could expect to see better products ranges in pubs, for example more locally brewed beers. 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

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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.

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 support the proposed content of the Bill and Code, and particularly the inclusion of the Market Rent Only option, the delivery of which will be a key function that ensures that tied licenses are no worse off than those that are free of tie.

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. 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.

(b) The Scottish Pubs Code should apply to all tied pubs in Scotland, but the Market Rent Only option should only apply to tenants of larger pubcos.

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.)?)

A large pub company should be defined as one owning 100 pubs or more in Scotland.

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) The Adjudicator should be funded by those that the Pubs Code seeks to regulate - namely pub owning companies operating in Scotland. Therefore it is acceptable, as with the Pubs Code Adjudicator for England and Wales, for a levy to be imposed on pub owning companies to which the Code applies, to pay for the Adjudicator and their office to function. As the number of tied pubs in Scotland is lower than that of England and Wales, the levy charges may not need to be as high in Scotland. As acknowledged in the consultation document, the Adjudicator position may only need to be a part time position, which will bring any cost burden down for pub owning companies paying a levy. There will also be an increased administrative cost from a requirement for a regular rent review, and completing necessary paperwork and rent assessments in the event of the MRO option being triggered. However, these features of the proposed Code are so vital to delivering the Code's aims, this is a small, justified cost for pub companies to bear. (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. Guest Beer Rights, as advocated by CAMRA, should be introduced for tied tenants, which will result in them being able to make savings on the cost of goods. Furthermore, through the provision of a regular and fair rent assessment, tied tenants who have been paying above what is fair in rent may see reductions in rent under their existing tied agreements. (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 be able 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?

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.

## 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)

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?

**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 measures will be needed as no negative impact on equality will be caused by the Bill.

## 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**

Calculation of pubs closing due to disposal by pub company.

## Page 22: General

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

**Guest Beer Rights**

In addition to a Market Rent Only option for tenants of pub companies owning 100 or more pubs in Scotland, I would also like to see the introduction of Guest Beer Rights for the tenants on the same pub companies as proposed by CAMRA.

Find breweries in Scotland over time stats - linked to increased consumer choice and importance of breweries being able to access the pub market.