

# 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".)

Politician (MSP/MP/Peer/MEP/Councillor)

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

Mark Griffin MSP

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 proposal a to establish statutory Scottish Pubs Code and Scottish Pubs Code Adjudicator will bring about greater choice for publicans to run their businesses, which could in turn enhance the offer available to pub-goers. For a while now the pub industry has struggled resulting in pubs in towns and villages closing down. The tying of pubs can place additional burdens on publicans which has added further pressure; tenants have experienced increased costs and the selection they can offer to attract customers

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.

is limited by these arrangements. It is right that the rent paid for a pub tenancy should be fair and reasonable compared to non-tied competitors so that they can grow and sustain their business for the longer term, rather than service the short term profit of a pub company or brewery. Both a code and adjudicator will give tenants options to break a tie if that lease becomes too onerous. Should they seek to break from a tied lease, a publican will gain opportunities and flexibilities which would therefore benefit them and their staff. Greater choice will allow publicans to be more competitive and attract a broader customer base, helping to secure those jobs and pubs. Because these ties ultimately limit the viability of pub businesses lifting these restrictions would be beneficial to the industry. While the number of tied pubs in Scotland is fewer than that of England and Wales, the number and proportion of pubs affected is not insubstantial. In an industry employing up to 60,000 workers in Scotland, roughly a fifth of all pubs – around 1000 – are tied. In order to achieve consistency with the market in England and Wales, where reforms have already taken place, a statutory Scottish Pubs Code and Scottish Pubs Code Adjudicator is required.

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.**

Supported by CAMRA, Scottish Licensed Trade Association, and the GMB, the legislation would give publicans the option to end their tied lease and reform the industry in the most expedient and efficient way. While there is a new voluntary code of practice in place, self-regulation has until now not been effective at redressing the imbalance brought about through tied leases. The Scottish Government could request the UK Government to extend the Small Business, Enterprise and Employment Act 2015 to Scotland, though this would still require the Scottish Parliament to agree, just as it will have to do in response to this proposal. By changing Scots law on tied pubs, Holyrood can be clear that this legislation adequately covers the Scottish market, and is not at risk of repeal or amendment in the UK Parliament.

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

As a starting point, the proposal would establish a pubs code and adjudicator for the Scottish pub market, and therefore achieve parity across Great Britain. The code and adjudicator would help tenants who wish to leave a tied lease, but also assist with disagreements.

The benefits that would flow from the code and the adjudicator are comprehensively listed in the consultation document: fairness across the pub market, choice for publicans and latterly customers; and economic benefit to the pub industry and employees through more sustainable tenancies and businesses.

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**

An option for a market rent only option is not only a crucial step to support publicans, but it is a necessary and logical reform for dealing with tied pubs. Allowing publicans to request to move to a dry lease – for the pub only – would mean that they can apply to be free of the restrictions and burdensome cost of having a restricted product line. Provision to allow independent assessors to determine the rent level may be necessary to ensure that the rent level is truly set at the market rate. The consultation paper discusses when the market rent only option might be invoked, or refused, for instance when there is a hike in the price of a product line; when a rent agreement or contract is due for renewal; or when a rent review is due. It seems sensible that this option is explored and that the circumstances are clear to both publicans and pub companies.

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?

It would be fair to have a degree of consistency across Great Britain, so providing the same powers is reasonable. Giving the adjudicator the power to levy fines, or at least providing for it in legislation and allowing commencement at a later date, would enhance the powers.

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.**

See above. Powers could be provided for in legislation, but commenced at a later date, dependent on the performance of the adjudicator has been tested.

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.**

This is a key reform to the industry and as such both the benefits and costs will be borne across the whole of the industry. Consideration has to be made about the longer term role of the code and adjudicator; while this reform seeks to redress the current issue of tied leases, future evolution in the market may lead to imbalances in the relationships between pub company and tenants not currently envisaged.

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) Potential loss of the wet-rent, which in turn may have to result in the pub company considering the viability of the pubs it leases. Calculations in the consultation documents based on the research conducted in relation to the 2015 Act suggests that the impact on the industry may be minimal. b) & c) The tying of pubs places additional burdens on tenants through increased costs and a limited selection available to their customers. It is right that the rent paid for a pub tenancy should be fair and reasonable compared to non-tied competitors so that they can grow and sustain their business for the longer term, rather than service the short term profit of pub company or brewery. Equally, consumers and publicans should not have to bear additional costs by having to service onerous wet rents on a restricted product line. Should they seek to break from a tied lease a publican will gain opportunities and flexibilities which would therefore benefit them and their staff. Greater choice will allow publicans to be more competitive and attract a broader customer base, helping to secure those jobs and pubs. Because these ties ultimately limit the viability of pub businesses lifting these restrictions would be beneficial to the industry.

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?

This is a key reform to the industry and as such both the benefits and costs will be borne across the whole of the industry, so consideration has to be made about the longer term role of the code and adjudicator. Bearing the cost across the whole would ensure that all pub companies, publican and consumers – not just those who frequent tied pubs – can contribute to the future health of the industry.

## 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**

With 40% of the workforce in pubs being under 25 years of ages, there is an obvious benefit to the

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employment of young people. As the reforms will promote the ongoing viability of the pub industry, in turn those jobs will be protected.

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

## Page 22: General

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

*No Response*