

# 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

Elaine Smith 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:**

Tied pub tenants experience higher costs and limited choice regarding what they can sell and are often at the whim of the pub owners who have less experience of the day to day operations of the pub. Introducing a statutory Scottish Pubs Code and Scottish Pubs Code Adjudicator will allow for these tenants to be treated fairly and allow them to operate on an even playing field with non-tied pubs. There needs to be mediation between tenants and pub owners to prevent abuse of the relationship and create a situation

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.

where tenants feel free to manage their business. That starts by giving tenants the option to opt out of their tenancies and pay a fair rate for their premises.

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 current options on the table to change the situation for tied-pub tenants are: To do nothing and allow the industry to self regulate. A hope that appears flawed given how many tenants have sought to complain about the situation they are working under. To persuade the UK Parliament to extend the scope of the 2015 Small Business, Enterprise and Employment Act provisions to Scotland (which would require the Scottish Parliament's consent under the Sewel Convention), a lengthy and convoluted process. Or finally, to do what this Bill proposes and to bring forward new legislation for Scotland that frees tenants from the current constraints they are under. A more direct and effective process that uses the powers the Scottish Parliament has for the betterment of Scottish tied pub-tenants.

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

The key advantage of introducing a code as stated above is the creation of a level playing field for publicans so they are no disadvantaged by taking part in a tied pub arrangement or unfairly treated by those who own the pub.

If an adjudicator is put in place then it allows tenants and owners the ability to have a mediator who understands the regulations as they are stated. This will also allow for investigation of any breaches of the code and help with arriving at suitable redress should that occur. An adjudicator already exists in England and Wales to fulfil this purpose and it has been well received and effective, there is no reason Scotland should not enjoy the same.

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

None. As long as it is formulated in a sensible way that reflects the problems inherent in tied pubs the only effects are likely to be positive.

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**

A Market Rent Only (MRO) option gives tenants the option to opt out of their contractual obligation to buy certain products from the owner. Instead, tenants are given the ability to pay a market value dry rent only and source their own products as other tenants and owners do, thereby ending the tie, and the wet element of their rental agreement. This was an essential aspect of the 2015 bill in England and Wales, and

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?

came with sensible restrictions that laid out the scope for an MRO. If the Bill is to succeed in Scotland it will require the same provision.

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 underpinning principles solidify the core idea that tied pub tenants should not be worse off due to the agreement they have entered into, and I believe this to be the fundamental goal of this legislation.

The general structure will require further consideration to adequately fit the Scottish context.

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.**

A code of practice without penalties for breaching would quickly become ineffective so it is necessary that such financial penalties are there.

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.**

In order for ease of understanding and to create a truly level playing field these regulations should apply to all tied pubs in Scotland.

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**

The Final Impact Assessment of the 2015 Bill in England and Wales showed that there was no significant negative impact on prices for customers – and would either stay the same or become somewhat cheaper. The same impact assessment noted that when tenants left contractual arrangements with pub owners it may have some negative financial implications for owners.

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?

The associated costs should be self-funded with direct and indirect costs to businesses being the responsibility of those businesses. The adjudicator should be funded by the setting of a levy on the pub companies related to the Bill. This levy should be proportionate based on size and the percentage of the company's turnover.

## 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**

There appear to be no direct consequences of this bill on the protected characteristics.

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

See previous answer.

## 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 support sustainable development by improving contractual arrangements that are not fit for contemporary work relations, so that current and future generations can enjoy greater freedom and flexibility, free of the particular contractual obligations which are proving so difficult for many tenants to operate within at present.

## Page 22: General

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

None.