

# 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".)

Current or former pub tenants or workers

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

Chris Reid, Henrick's Bar & Bistro, Edinburgh

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:**

I am a tenant of a leased pub, tied to Belhaven (as part of the Greene King Brewing Group), whilst I personally am in a unique position, I am fully supportive of the introduction of a Scottish Statutory Code of Practice and the creation of an independent adjudicator to oversee the partnership between Tenants and Pub Companies / Brewers. My unique position is that as a tied house with Greene King, I am offered the opportunity to seek support from the Pub Independant Concilliation & Arbitration Service (PICAS), with

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regard to rent review and disputes and also offered further support from the Royal Institute of Chartered Surveyors (RICS) and Pubs Independent Rent Review Scheme (PIRRS), until such time as a statutory body is set up in Scotland, to deal with such legislation. This is an unusual measure offered to Scottish Tenant Licensees from Greene King and I believe that it is offered to all of its Scottish estates. However, whilst this level of protection is appreciated and to date untested, there is no guarantee that any findings or rulings by either body, would be legally binding due to the devolved nature of this matter. It is also unclear, if legal assistance would be offered to Scottish tenants to represent them, in such an instance, should the matter be required to be heard. My business has faced many difficulties and challenges as the relationship with alcohol and society within Scotland has changed at an incredible rate over the past years and continues to do so, as the habits of customers change and evolve. Couple to this, the uncertainty towards both the economic and business climate in which I operate, not to mention our removal from the European Union, I also have to operate in an uncompetitive market by being tied to my brewing landlord to purchase Draught and Packaged products at an incredibly inflated price, restricting my business operation and negating my opportunity to compete on a level field with my competitors. In short, my business will always be in a poorer position than businesses which are free of tie and open to the possibility of exploitation by unscrupulous Pubco landlords. As I stressed earlier, whilst I am in a unique position with my brewing landlord, there is no guarantee that Greene King wouldn't sell on the estate to another Pubco.

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 are very few tenants in Scotland, that have been offered the unique protection of a statutory code of practice that is on offer in England & Wales and whilst there is a voluntary code of conduct, introduced by the Scottish Beer & Pub Association, this association does not represent the tenants and licensees involved with tied properties, but represents the interests and needs of the pub companies and brewers which form its membership.

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

Many operators of premises across the country, do not have or do not come from, a background of business and have perhaps worked in the hospitality industry, with little exposure to the intricacies and menaces of corporate business and the big bad world. In short, many tenant licensees, are unaware of alternative solutions or the protection that may be available when faced by the bombardment of Pubco's leading them down their chosen path.

The introduction of a Statutory Code and an Independent Adjudicator, will allow tenants the opportunity to operate with the protection and belief that they are being treated fairly and equally alongside those that are free of tie.

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**

The provision for a MRO option for tenants will offer a choice for businesses. The MRO will provide a true representative rental for their premises, in line with their competitors. There is no doubt that in virtually every case, this will lead to a higher rental for tenants, however, this would be offset by the opportunity to purchase products on the open market at a competitive price in line with free of tie houses. The services which many pubco landlords impose on their tenants, are often over priced, or not suited to each individual premise and can often be too generic. The MRO would also allow business to tailor the services required to suit and allow a more competitive price or comprehensive service to benefit the business. In research widely available, as many as 97% of tied Scottish publicans believe that they are worse off as a result of a reduced rent, as it does not cover the inflated prices paid on the beer that they purchase. These prices are often exorbitant and unfairly positioned as tenants are unable to purchase freely without risking losing their tenancy or the heavy and extreme liquidated damages and interests. If the option for tenants to take up a Market Rent Only Option is available, it is likely that Pubcos and Brewers would offer a more competitive and attractive pricing strategy on their tied products and make it incentivised, thus making their deals fairer, more attractive and affordable.

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?

In general, it appears to be broadly similar and coherent with those powers offered in England and Wales, however, it must be stressed that the adjudicatory body must have powers to impose penalties for any digression from the code and framework.

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.**

Any penalties imposed must have the power to ensure that companies will be dealt a significant blow should they not adhere to the code. However, common sense and the power of authority must be granted to the adjudicator to allow for a proportionate response to matters of conduct breach.

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 code of practice must apply to all tied pubs in Scotland. There can be no minimum level of tied estates that would allow pubco's to split and operate in a manner that allows them to manipulate the system. There can be no 'wriggle room' allowed to the Pubcos which would enable them to continue to operate in the unfair manner which many tied licensees face. This has happened in the past and splits in operation from Pubcos is still in practice, all be it, more for operational and financial gain, than to avoid legislative or statutory matters.

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) I don't feel that there would be any significant increase or decrease in this matter. If I am free to choose my products on the open market, there will obviously be a flow towards better prices and those suppliers that offer them, however, in these challenging times, it is more a case of value for money. Currently, my business doesn't concentrate on pushing tied products, due to the limited profit margin available to me on these products. However, being able to purchase these items at a more favourable rate, would likely increase sales and revenue and in turn, increase the volume of product that I would purchase. It is ridiculous that as a direct outlet from a brewery, that I can purchase the same product at a cheaper price through a third party. Pubcos should look to commit to their estate with incentivised promotion or exclusive products that are not widely available through supermarkets, or they should offer them at the same price.

(b) Considerable savings could be made on the provision of products available to tied tenants, which would be passed to customers directly or indirectly, through the improvement of premises. With the option for MRO, tied tenants could also benefit by presenting a product to the consumer sourced at a price that would be considerably cheaper on the open market. As such, volume and demand should in turn increase and generate more income for the pubco's, if they support this by incentivising the products on offer.

(c) The trade has faced unprecedented increases in costs over the past years due to the change in business climate, increased demands on business with pressures such as Business Rates, VAT, Pension Contributions and Minimum Wage as well as a steady increase and rise in the costs of services and products. The savings are unlikely to be passed in full to the customer initially, however, over time as businesses can stabilise and move forward, indirect benefits would also be passed to the customers, with improvements made to the business. Such as increasing staffing levels, resourcing more events for customers, renovations or additions to premises, increase in general standards of comfort, increased product ranges and choice for the customer. All things that have suffered as business expenses have had to be cut or reduced over the years.

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?

I believe that the system in England and Wales is mainly funded through a levy placed on the Pubcos. I would imagine that a similar method and model for Scotland should mirror this scheme.

## 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**

I do not see how this bill would impact such issues.

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

**Please explain the reasons for your response**

The rate at which pubs across the country have closed over the past years is alarming. The result is not only hardship for business owners and unemployment, but is much wider in terms of the social effect on rural locations and the erosion of the community spirit, that is so often focused on the local bar. Buildings have been left derelict and empty, where once stood venues full of harmony, hope and happiness. City venues have been replaced with soulless, faceless and generic xerox reproductions of characterless behemoth entities, where cheap beer and frozen food have driven out very essence of the public house. Over the past two years, based on research compiled by the trade, tied tenancy pubs were 62 times more likely to close than a free of tie premise.

## Page 22: General

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

As stated at the outset of this response, I am speaking from a privileged position, whereby my Pub Brewing Landlord, offers to me a level of protection which is purely voluntary on their behalf. This is something that I am truly grateful for and Greene King should be commended for this action.

However, I speak on behalf of those tied tenants across the country, some of whom are no longer in business, or have suffered exceptionally difficult and hard times. This proposal for a Statutory Code of Practice, must be robust, enforceable, comprehensive, fair and empowering.