

# Proposed Tied Pubs (Code and Adjudicator) (Scotland) Bill

## Page 2: About you

Are you responding as an individual or on behalf of an organisation?

on behalf of an organisation

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".)

*No Response*

Please select the category which best describes your organisation

Commercial organisation (company, business)

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

Tennent Caledonian Breweries, 161 Duke Street, Glasgow, G31 1JD

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:**

Tennent Caledonian has been brewing at Wellpark in Glasgow since 1556; in fact we are Glasgow's oldest business still in existence.

Since 2009, Tennent Caledonian has been owned by C&C Group, owners of Bulmers the leading Irish cider brand, Magners the premium international cider brand and the Tennent's Lager brand. C&C Group is headquartered in Dublin and is listed on the Dublin and London stock exchanges.

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.

Tennent's has a passion for and commitment to Scottish brewing and hospitality dating back almost 500 years.

We directly employ 500 staff and supply 7,000 customers (who in turn employ 25,000 staff) Since 2009, we have invested £20m in our brewery at Wellpark to make it a world class brewing, packaging and visitor experience including our joint venture with Williams Brothers, Drygate Brewery. In 2010, we opened the Tennents Training Academy on the Wellpark site which has provided quality, accredited courses to over 38,000 students looking to establish careers in the hospitality industry. Over the last 6 years we have invested £45m in Scotland's pubs, clubs, hotels and restaurants, through our lending offer – more than any bank, building society or lending provider.

We lead on alcohol responsibility in Scotland. We were the first supporters of Minimum Unit Pricing since proposals were launched in 2011. We are the first producer to include calorie information and the new CMO guidelines onto our packaging. We support thousands of charity and community causes every year. In 2014, CGA Strategy undertook a survey of Scottish tied outlets for CAMRA which identified that 2 in 3 Scottish publicans are living below the UK Living Wage, 3 in 4 believe they are worse off as a result of the tie, 97% believe that the reduced rents do not offset the increased prices they pay on beer, and 99% wanting the Scottish Government to act to ensure that the same protections afforded to English tenants are extended to Scotland.

In November 2014, the Westminster Parliament voted to amend the Small Business Enterprise and Employment Bill specifically concerning the revision of Part 4, to allow changes to the beer tied pub tenancies.

On 21st July 2016, a new Pub Code came into effect in England and Wales that allows tenants of multiple pub operators with more than 500 outlets (PUBCOS) to request a market rent only option.

To date, no such legislation has been brought forward in Scotland and Scottish tenants are therefore being left behind.

The UK Government saw the need to intervene given failure of PUBCOS to address weaknesses of the tied pub model and too properly self regulate (the relationship between PUBCO and their tenants is not one of equals). Tenancies in Scotland therefore lack the same protections as their counterparts in the same multiple pub groups in the rest of GB.

Our evidence paper submitted to the Scottish Government in Jan 2015 on behalf of a coalition including SLTA, GMB Union, The Scottish Tourism Alliance, The Pubs Advisory Service and a series of small Scottish brewers including Williams Bros, Harvieston and others highlighted that  
- THE BEER TIE DISADVANTAGES TENANTS AND EXTRACTS VALUE FROM THE SCOTTISH ECONOMY

- o Currently, there are around 1,100 Leased & Tenanted outlets in the Scottish on trade (CGA Brand Index, 2016). With £28k being taken from each outlet by the PubCo, this represents around £31m being extracted from the Scottish economy for the purposes of serving external investors and shareholders.

- o In a free of tie model, the publican takes ¾ of the additional margin

- o MRO would inject £23m into Scottish outlets and £8m into Scottish brewing

- o There will be increased value extraction from Scottish economy if the Tied Model expands

- TIED OUTLETS ARE MORE LIKELY TO CLOSE

- o 74% of publicans believe they are worse off as a result of the tie, 97% do not believe that the reduced rents fully offset the increased beer prices and 66% make less than £15k per annum

- o Using CGA's Brand Index, - tenanted revenues have declined year on year, and are now -8% lower than 2 years ago; in the free trade, revenues have increased and are now +5% greater than 2 years ago

- o Using CGA's Outlet Index, and reviewing the total number of tenanted versus free trade outlets. Between 2013 and the end of 2016, tenanted outlets declined by -8%, whilst the free trade grew by +3

- RESTRICTED ACCESS TO SCOTTISH BRANDS & BREWERS

- o Scottish consumers prefer Scottish brands

- o In the Scottish free trade, English beers comprise less than 8% of all beer consumed

- o Commercial structure of the Beer Tie creates vertical linkage through Pubco's to National Brewers

- o In the Scottish tied sector, English beers comprise 16% of beer consumed.

- Scottish tenants demand same protection as peers in the rest of GB (CGA Strategy – Sept 14).

We also challenge the findings of the recent Scottish Government survey (2016) that found that there was no evidence to suggest that "any part of the pub sector in Scotland is being treated unfairly"

Our challenge is based on

- POOR SAMPLE SIZE

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.

o Only 25 outlets participated in the study. (10 Free, 10 Tied Tenanted and 5 Partially Tied Tenanted outlets)

- UNREPRESENTATIVE SAMPLE

o The study only focussed on tenants in business for a minimum of 3 years, it ignored the high level of failure we see in the tenanted sector – skewing the sample towards the better performers

o As Scotland's largest drinks wholesaler, we supply around half of all tenanted outlets in Scotland. Since 2013, 54% have changed ownership – making them ineligible for the Scottish study. As context, if this were a General Election, it would be akin to excluding all Scots aged under 51 from voting.

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.**

Since the creation of PUBCOs following the Beer Orders in 1989, criticism and concerns regarding the 'unfairness' (primarily costs of rent and prices of those drinks the tenant is contractually tied to purchase) of the relationships between Pub Companies and tenants in GB have seen regular Governmental interventions - in the form of investigations and reports. The first of which, the Trade and Industry Committee Report (Dec 2004) identified issues over the imbalance between the powers of the Pub Companies in relation to the individual tenant. These inequalities led to the first of many requests for revision of the BBPA voluntary Pub Company code of conduct. Given the long term and cumulative evidence across Britain and the failure of voluntary codes to address these failures, Ministers finally intervened with the introduction of the Pubs Code in England & Wales. This has been summarised in the BIS Impact Assessment. "For many years serious concerns have been raised about the relationship between large pub companies and their tenants. Four successive Select Committee Inquiries, in 2004, 2009, 2010 and 2011, have identified significant problems within the industry. The focus has been on tied pubs, the treatment of tenants and the share of reward gained by pub owning companies. The Select Committee received repeated reports of delay in opening rent review negotiations, lack of transparency in such negotiations, failure to carry out repairs agreed when a tenancy began, verbal agreements being ignored, and of harassment of tenants when they were vulnerable through bereavement. Such problems occur due to inequalities of bargaining power in these business contracts. Given the evidence, Ministers consider there is an equity/fairness reason to intervene in this market. A self-regulatory approach has been tried and was found wanting by the Select Committee in 2011 and the Government in 2012." (BIS Impact Assessment, January-15, p1)

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 in law the principle of fair and lawful dealing between multiple pub operators and their tied tenants.  
In the Scottish CGA Survey (Dec 2014), 96% of respondents wanted a statutory code and independent adjudicator.

The voluntary codes that have existed since the creation of the PUBCOs have failed to address the issues / weakness of the tied pub model. Given that this is not a relationship of equals (in too many cases tenants are unable to secure a fair share of risk and reward in their agreements), a statutory pub code and adjudicator will benefit tenants in the following areas. For example, Asymmetric information (PUBCOS have better information than tenants) will be addressed by improving information to tenants when they sign leases and at rental negotiations. The Adjudicator's investigation power might also be used to prevent systematic abuses around information provision. Also, the imbalance of bargaining power will be addressed by information provision and improved enforcement.

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

An independent statutory adjudicator will have much greater powers and provide stronger enforcement than the existing ineffective voluntary dispute resolution mechanisms.

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

No Disadvantages

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 option should be available to Scottish tenants as pub-owning companies (with 500 or more tied outlets) need the threat of tenants going free-of-tie before they will offer their tenants a fair tied deal. The market rent only option also helps address the imbalance in bargaining power as a free of tie offer will allow tenants to make a more straightforward comparison between the tied and free of tie business model. Giving tenants an additional choice means they are in a stronger bargaining position and pub companies will have to work harder if they want the tenant to choose to remain tied. The main benefit of the market rent only offer is to ensure fair treatment of tenants in line with the principle that tied tenants should be no worse off than free of tie tenants. This will be achieved by enhancing tenants' bargaining power and ensuring any dispute is resolved in a fair way. Under this option a tied tenant that thinks they will be better off being free of tie can choose to be free of tie. The existence of the option also gives the tenant more bargaining power where pub owning companies want to keep tenants tied. This should allow them to get better deals even where they don't exercise the option. A Market Rent Only option will also help improve consumer choice and benefit 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 beers. While there are examples of tenanted outlets stocking more brands per outlet than free trade accounts, this is an abuse of the data. Tenanted outlets are typically larger outlets with a throughput on beer that is 2.3x greater per outlet than a free trade account. A major contributing factor to brand proliferation in tenanted outlets has been the 'crowding out' of Tennent's Lager on the bar, with pubco's looking to place as many other options (typically not Scottish owned brands) into their Scottish outlets in order to weaken Tennent's Lager sales. This is a response to our opposition to their model.

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?

They seem entirely appropriate.

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.**

The ability to impose financial penalties for severe breaches of the code is another measure to ensure that pub companies adhere to the Code and tenants are treated fairly. It is also worth noting that while the Adjudicator should have this power, it does not preclude the Adjudicator choosing to take alternative

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?

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. Despite all the abuses noted in the 4 successive select committees, we are not aware of existing bodies having the power to impose fines, or, if they do, that any fine has ever been demanded.

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.

(c) The Scottish Pubs Code should apply only to larger pubcos and the Market Rent Only option should only apply to tenants of those larger pubcos.

**Please explain the reasons for your response.**

(c) The threshold should be 500 pubs throughout GB. A 500 threshold protects the concept of a GB wide single market and is an option that has already been tested in the rest of GB. If a lower threshold were applied you could end up with a situation where that size of pub group is penalised for being Scottish.

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.))?

Larger pubcos should be defined by reference to the number of pubs that they have throughout GB.

## 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:

*No Response*

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 and through fines and penalties imposed. This is an entirely proportionate measure, which provides financial motivation for pub owning companies to avoid breaching the Code, thus incurring financial penalties from the Adjudicator (which CAMRA is proposing that the Adjudicator should have the power to impose).

## 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**

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 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**

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?

It has already been accepted by the Westminster Government that the tied model is unfair and open to abuse – requiring intervention on the grounds of equity and fairness. This has been accepted as fact, and acted on accordingly. We are dismayed that Holyrood appears to be dragging its feet on this issue

Before the study was announced, both sides of the debate were calling for this to be moved to consultation. It is unsurprising the BBPA have changed their position following the release of a deeply flawed and unreliable study.

Opponents may contend that aims of the proposal could be delivered via the Industry, but no body covers all of the respective pubco's (BBPA excludes Greene King for example), and exclusion from these bodies doesn't result in adverse effects.