

# 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

Greene King plc

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 opposed

**Comments:**

1.1. Greene King does not believe there is a proven need to establish a statutory Pubs Code and Adjudicator in Scotland. The statutory approach proposed would therefore be an unnecessary and inappropriate method of addressing the challenges currently facing the Scottish pubs sector.

1.2. Greene King has significant experience and expertise in the Scottish market. Today we operate 272

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.

pubs under the Belhaven brand, stocking Scotland's number one ale brand in Belhaven Best, which is still produced in Dunbar, Scotland's oldest working brewery. Our pubs and brewing businesses employ 3,291 people across Scotland. A key part of our business is our tenanted sector, through which we support 140 tenanted businesses in Scotland. The tied model has formed an integral part of our successful business over the last 300 years in Scotland and has adapted over the years to offer flexible, transparent and competitive agreements. A key element of the tied model is the SCORFA benefits provided by pub-owning companies which see us heavily invest in our tied estate. This investment comes in the form of property support through transformational investments, building repairs and decoration, as well as behind the scenes investment in our tenants through business management advice, brand and outlet promotion support and marketing as well rating advice, licensing and legal support. Today we are recognised for the quality of our pub estate and the iconic brands sold within it. This quality is maintained through high levels of long term investment in our tied pubs and a business wide focus on ensuring our customers receive great value, service and quality.

1.3. As a major operator in the Scottish market Greene King co-operated with the Scottish Government commissioned research into the sector undertaken by CGA in 2016, the conclusions of which accurately reflect our own experience that neither the tenanted division, nor any other part of the pubs sector, is unfairly disadvantaged by its business model.

1.4. These conclusions support our belief that the assertions made in this consultation document such as, 'many tied pub tenants can encounter additional problems' which 'can leave tied pubs worse off,' significantly overstate any potential disadvantages of a tied tenancy relative to owning and operating an independent pub, and ignore the numerous advantages of the tied model. The CGA research clearly found advantages and disadvantages to each type of contractual model in the Scottish pubs sector. Greene King is proud to offer our tenants the opportunity to start their own small business through the tied model. Our tenancies provide easy access into the market, the opportunity of flexible contracts followed up with experienced support in business management, dedicated professional advice and high levels of investment in our pubs.

1.5. Our tied tenancies remain a popular choice. Their popularity reflects the fact that the cost of entry into the Scottish market via this route is approximately 13 times lower than for those purchasing a freehold while tied tenants go onto make very similar levels of profits to comparable free of tie tenancies. Within Greene King we have not seen the levels of tied tenant discontent referred to within the consultation document. Instead, our experience is in line with that of the independent arbitration services the Pubs Independent Rent Review Scheme (PIRRS) and Pubs Independent Conciliation & Arbitration Service (PICA-Service), which have received no formal complaints from tenants on their tied tenancy. The introduction of a statutory Code and Adjudicator therefore seems to be an unnecessary step intended to counter perceived harms to tied tenants and police contractual arrangements, which are currently used by successful pubs across Scotland.

1.6. Not only do we consider this statutory route proposed in the consultation to be unnecessary for Scottish tied tenants, it would also be inappropriate for the Scottish market as the proposed approach is so closely based on that undertaken in England and Wales. The current proposal does not take into account the significant differences between the Scottish sector and that in England and Wales. In Scotland, there are currently approximately 942 tied pubs, representing 17% of the market, in contrast with approximately 19,500 tied pubs in the UK overall, which represent 39% of the market. A statutory approach would therefore be a disproportionate manner in which to oversee this significantly smaller section of the market, particularly when there have been no complaints about the obligations of the tie brought by tenants to the current independent bodies. Further significant differences with the sector in England and Wales include the greater presence of smaller multiple operators in the Scottish market. The creation of a distinction between larger pub operators and smaller multiple retailers on the number of tied pubs, set at 500 in England and Wales, would be unfeasible in Scotland. The establishment of a Code and Adjudicator for England and Wales placed significant burdens on the six companies within scope of the code, introducing a comparable burden in Scotland would be unmanageable for many of the multiple operators in the Scottish market.

1.7. The entire Scottish pubs sector is currently operating in a challenging environment. Regulatory changes in recent years, including the smoking ban and lowering of the drink drive limit, have had a significant impact on the Scottish pubs sector, which shrunk by 23% between 2005 and 2015. This heavy regulatory burden has increased with the latest rise in the level of business rates, which has placed an almost unmanageable burden on many pubs. The CGA research clearly recognised that we are currently experiencing a difficult period in which to operate a retail business, and in this context we believe the additional burden of a Statutory Code and Adjudicator risks harming the tenants and businesses it seeks

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.

to support by adding to this burden. Multiple operators face an additional challenge in Scotland due to the dominance of brands manufactured and distributed by C&C, including Tennent's lager. The market power of the C&C group in Scotland, through Tennent's, presents a significant challenge to retailers who ensure a route to market for their products through their tied estate. The loss of this route to market would risk a significant downturn in the diversity of brands available in Scotland and restrict consumer choice.

1.8. We acknowledge that the work undertaken to support this proposal and the research undertaken by CGA both highlight areas for improvement in the relationship between pub operators and their tenants. We are committed to working with our tied tenants to ensure that we can deliver the best possible value, service and quality for our tenants and customers. In particular, we will take on the specific recommendation from the CGA research and seek to better convey the value of the SCORFA benefits the tied model delivers and how this supports successful pubs across Scotland. We remain dedicated to working with the Scottish Government, Scottish parliamentarians from all parties, as well as the wider industry and tenant groups to ensure that any perceived issues in the tied model are addressed, so this vital avenue into the pubs sector can thrive in today's challenging environment.

Q2. 2. Could the aims of this proposal be better delivered in another way (without a Bill in the Scottish Parliament)?

Yes (if so, you may wish to specify any possible alternative option(s))

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

2.1. We believe that the stated aim of this proposal to 'ensure that tenants of large pub companies who have a tied arrangement are treated fairly and are no worse off than free of tie tenants,'. This is already being delivered through the Scottish Pub Sector Code of Practice introduced in 2016, of which Greene King is a signatory. 2.2. This Code established minimum requirements governing the operation of tied pubs in Scotland, overseen and supervised by the Pub Governing Body, and crucially offers tenants two independent arbitration services for any rent or contractual disputes, through PIRRS and PICA-Service. As a signatory to the Code, Greene King has committed to: i,§ Acting with integrity and honesty at all times and conducting business in a professional, fair and legal manner. i,§ Being transparent about our terms of business and other dealings, particularly any charges made or costs passed on and the way in which rent has been assessed. i,§ Offering contracts that are fair, reasonable and comply with all legal requirements. i,§ Dealing with complaints in good time and fairly, in accordance with a clearly defined internal dispute mechanism and with access to independent dispute resolution, where appropriate, if such a mechanism fails to resolve the complaint. 2.3. In addition to these specific requirements, the Code requires all companies to abide by the spirit in which it has been compiled. Acting to the spirit as well as the letter of the Code underpins the way in which Greene King operates our tied business and we do not recognise the lack of compliance which has been identified by some as justification for a statutory Code. 2.4. Introduced from the same date as the Statutory Code (Pubs Code etc Regulations 2016) for England and Wales, the Scottish Code commits companies to many of the same principles on which the English and Welsh Code was developed, balancing what works for Scottish tenants while maintaining the valuable link between pub operators and tied tenants. 2.5. As part of our obligations under the Code, Greene King already provides the type of tenancy agreement advocated for in this proposal. Our tied tenancies offer tenants flexibility and transparency around the beer tie, including tailored options such as the ability to purchase regional beers and Scottish spirits within the terms of the tie. The two key aspects of the English and Welsh statutory Code are the ability for tenants to request a Market Rent Only (MRO) option at specific trigger points and the oversight of an independent arbitrator for any disputes in the form of the Adjudicator. Both of these aspects are already captured within the Scottish Code, as companies are required to have a specific policy around offering tenants assistance in any circumstances where their business has been adversely affected by a material change beyond their control, the type of situation which might trigger an MRO request under the statutory Code. In addition, any disputes around rent under the Scottish Code can be referred to an independent expert through PIRRS or to arbitration. Similarly any other disputes around adherence to the Code can be referred to PICA-Service for independent resolution. This comprehensive system of governance requirements and independent arbitration currently deliver the stated aims of this proposal without the need for legislative action.

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

3.1. As set out above, Greene King believes that the current Scottish Pub Sector Code of Practice provides the necessary governance and oversight of the relationship between pub operators and tenants to ensure a balanced, high quality tied sector in which tenants are fully supported. We do not believe that there would be any additional advantages in establishing a statutory Code and Adjudicator and to do so would risk harming the Scottish pubs sector.

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

4.1. As indicated above, Greene King firmly believes that the introduction of a statutory Pubs Code would be unnecessary and inappropriate for the Scottish pubs market and would risk causing significant harm to a sector already operating in a challenging regulatory environment. It is our strong belief that the tied model provides unique advantages to the market and that the introduction of a statutory Code, which materially affected the way that the model operates, would risk causing damaging unintended consequences, including pub closures and job losses.

4.2. As it stands, we invest heavily in our tied estate providing property support through transformational investments, building repairs and decoration, as well as behind the scenes investment in our tenants including business management advice, brand and outlet promotion support and marketing as well rating advice, licensing and legal support. This investment is provided through the security provided by the tied model, removing this through the introduction of MRO would place this investment at risk. In such a competitive market and facing external regulatory challenges, any decline in investment in tied estates would increase the risk of pub closures and job losses in the sector. In the long term, any shrinking of the tied model may risk the closure of some Scottish breweries and restrict consumer choice as the market share in brewing is consolidated among a smaller and smaller group of producers.

4.3. Despite the challenging environment in which Scottish pubs have operated in recent years, they have continued to deliver significant benefits to the Scottish economy. In 2016 the brewing and pubs sector generated £1.6 billion for the Scottish economy, contributing £972 million in tax revenues for the Scottish Government and employing approximately 60,000 people in Scotland.

4.4. Greene King is proud of the quality of its leased and tenanted estate in Scotland. We will have invested over £4 million for 2016 and 2017 through transformational schemes. We believe that the introduction of a Statutory Code and Adjudicator for the tied sector may have significant unintended consequences which could ultimately harm the growth of such a rich Scottish heritage if this investment was not available.

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 opposed

**Please explain the reasons for your response**

5.1. We clearly oppose the introduction of a statutory Code for the reasons set out above, and would particularly disagree with the need to require the MRO option to be offered under such a Code, due to the potential unintended consequences this may have on the security of the tied model and the growth and employment it generates.

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?

6.1. The close alignment of the proposed scope of the Bill and Code with that of the Code and Adjudicator for England and Wales is wholly disproportionate to any perceived imbalance between pub-owning companies and tenants in Scotland. As set out above there are fundamental differences between

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 English and Welsh pubs market and that in Scotland, which would make direct application of the Code and Adjudicator model in appropriate.

6.2. In addition, the system in England and Wales has only been in place since 21 July 2016 and as such it is not yet clear whether the system is functioning as intended by Small Business, Enterprise and Employment Act 2015. A thorough analysis of the impact of the English and Welsh Code should be undertaken before any proposal to copy its measures is considered elsewhere.

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 opposed

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

7.1. As indicated above we would oppose the introduction of a statutory Code, particularly one which so closely followed the model of financial penalties included within the English and Welsh Code which would be ill-fitting to the Scottish market.

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.

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

None of the above, we do not believe that a Scottish Pubs Code or MRO option should apply to pub-owning companies in Scotland of any size.

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.))?

N/A

## 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

Q10. 10. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

<b>(c) Tied-pub customers</b>						X
-------------------------------	--	--	--	--	--	---

**Please explain the reasons for your response**

(a) Not only would we have to pay our share of the cost of an adjudicator, as we do in England and Wales, but we would have to recruit and train additional employees to help us to ensure we remain compliant to the code, as we have done in England & Wales. The cost of an adjudicator in Scotland would be significantly higher to us on a per pub basis and potentially accelerate the demise of a number of pubs within our estate in Scotland. (b) There will undoubtedly be costs for tied-pub tenants, however it is difficult to give any indication of what this would be. As yet no thorough analysis has been undertaken of the impact of the English and Welsh Code on tied-pub tenants, therefore we are as yet unable to compare the impact of this form of Code, albeit on a very different market. (c) As indicated above we believe that the introduction of the proposed Code in Scotland would risk significant unintended consequences that could impact pub-owning companies, tied tenants and pub customers. As referenced above, no thorough analysis has been undertaken of the impact of the English and Welsh Code as yet, and therefore we are unable to compare the impact of this form of Code, albeit on a very different market.

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?

Greene King firmly opposes the establishment of the type of Adjudicator system set out in this proposal.

## 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?

*No Response*

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?

*No Response*

## Page 22: General

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

*No Response*