

# 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

Scottish Property Federation

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.

Partially opposed

**Comments:**

At this stage, the Scottish Property Federation is of the view that the proposed legislation on a 'Scottish Pubs Code' is unnecessary and could have negative consequences for the pub industry. Further, if this legislation is to go forward, we would argue that there is an urgent need for more Scottish based market

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.

research on the Bill's predicted impact on the pub industry, which is missing from the consultation document.

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.**

Legal and professional advice The SPF is of the view that improving tenants' uptake of legal and professional advice before lease agreements are finalised would significantly benefit tenants and help achieve the aims of the proposal - without the need to legislate. At the moment, a significant number of prospective tenants of tied pubs do not obtain adequate legal or professional advice before entering into lease agreements. This could lead to the possibility of there being unexpected conditions for tenants further into their tenancy if they have not adequately understood or negotiated the terms of the lease. We hope that more tenants will seek advice in the future as experts can help to protect tenants on the financial side of the deal as well as the legal. Although the market to continue self-adjusting Since the 2008/09 financial crash, there has been a greater appreciation of the symbiotic relationship that exists between pub landlords and tenants. Landlords are doing more work with their tenants to ensure that their business operates successfully, which in turn enhances the landlord's underlying asset value. In addition, there has been a significant increase in availability of free-of-tie leases in the market and demand for these continues to outweigh the demand for tied leases. Therefore, the current market trajectory is such that, without the costly and time intensive process of introducing a Bill to the Scottish Parliament, the aims of the proposal could soon be delivered. In recent years great strides have been taken to ensure that leases are more competitive and fair to both parties - a process that our members support and expect to continue.

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

*No Response*

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

Costs and impacts

It has been reported that roughly 1.6% of the total number of tied units in England have had cases referred to the adjudicator. If the same percentage of tenants in Scotland were referred to the Scottish adjudicator then there would be roughly 15 cases every year. Given the consultation document advises that 12 pubs are likely to close as an 'indirect' consequence of the proposed legislation, the net benefit could be that relatively few businesses are better off - if any at all. When the risks and costs of the Bill are considered, the SPF believes that the negatives could very easily outweigh the potential benefits.

In addition, imposing the proposed restrictions on landlords could result in pub companies deciding that tied rents, and perhaps even letting properties as pubs, would come with too much financial and regulatory risk. This could result in landlords selling properties or moving out of the Scottish market all together, which would be detrimental to the numbers of pubs in Scottish communities. The proposal indicates that only 12 pubs might close as a result of this legislation (at a cost to business of £516k), however, our members believe that the figures could be considerably higher. It is vital that there is a balance between protecting tenants and not discouraging potential landlords and the additional investment that they bring to pubs.

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

Scotland's comparison with England and Wales

It should be noted that tied pubs in Scotland operate in a different legal system from England and Wales. As a result, situations that arise south of the border relating to leases are not necessarily applicable in Scotland. Throughout the consultation document there are many reference to the English and Welsh Pubs Code, with little research based on the different circumstances in Scotland. While there may have been a requirement to legislate in the rest of the UK, comparisons with the Pubs Code used elsewhere could be unhelpful or lead to the wrong conclusion. Without more focused research into the possible impacts of the Bill in Scotland it is impossible to fully appreciate the effect of legislating in this area.

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?

*No Response*

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?

*No Response*

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?

*No Response*

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.

*No Response*

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:

*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?

*No Response*

## 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?

Conclusion

The legislation will have various implications for competition law; we would like to see more detail on how the Bill will adhere to these regulations in order to safeguard a free and fair market.

We would like to note that the proposal being consulted on was presented in a user-friendly way and our members generally found it to be well written and easily understandable.