

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



**A proposal for a Bill to establish a Pubs Code in Scotland to govern the relationship between tenants of tied pubs and their owners, and an Adjudicator to enforce the Code**

**Consultation by  
Neil Bibby MSP, Scottish Labour Member for West Scotland**

20 February 2017

## CONTENTS

<b>Page 3:</b>	Foreword by Neil Bibby MSP
<b>Page 4:</b>	How the consultation process works
<b>Page 5:</b>	Aim of the proposed Bill
<b>Page 5:</b>	Background
<b>Page 5:</b>	Pubs in Scotland – facts and figures
<b>Page 6:</b>	What are tied pubs?
<b>Page 7:</b>	Problems with the tied pub system
<b>Page 8:</b>	UK legislation passed in 2015
<b>Page 10:</b>	The case for change in Scotland
<b>Page 12:</b>	Publication of voluntary Scottish pubs code of practice
<b>Page 13:</b>	Scottish Parliament/Scottish Government action to date
<b>Page 15:</b>	Why legislate?
<b>Page 16:</b>	Is the Scottish Parliament able to legislate?
<b>Page 16:</b>	Detail of the proposed Bill
<b>Page 17:</b>	Underpinning principles
<b>Page 17:</b>	Contents of the Bill
<b>Page 17:</b>	Contents of the Code
<b>Page 18:</b>	Adjudicator’s role and powers
<b>Page 19:</b>	Potential impacts of the Bill
<b>Page 20:</b>	Financial implications
<b>Page 21:</b>	Equalities
<b>Page 21:</b>	Sustainable Development
<b>Page 22:</b>	Questions
<b>Page 26:</b>	How to respond to this consultation

## FOREWORD



Times have been tough for the pub trade as a whole but many tied pub tenants can encounter additional problems, from the high cost and limited selection of tied products to contractual disputes with their pub company owners.

All of this can leave tied pubs worse off than pubs which have no tied arrangement, hurting these hard-working small businesses and restricting choice for customers.

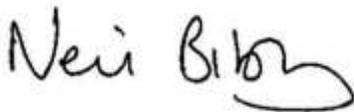
The aim of my proposed Bill is to ensure that tenants of large pub companies who have a tied arrangement are treated fairly and are no worse off than free-of-tie tenants.

I propose to introduce a statutory Scottish Pubs Code to govern the relationship between tied tenants and their pub company owners, and a Scottish Pubs Code Adjudicator to enforce the Code.

In bringing reform to this sector, I want to give tied tenants the ability to opt out of tied arrangements if they wish, and pay a fair and reasonable market rent for their pub premises. I want tied pubs tenants to be free to source and purchase products as they see fit and to have the flexibility they need to react to changes which affect their business in this competitive and often crowded market.

My proposal does not force an end to tied arrangements in the pub industry. If some feel that the tie is working well, then nothing need change. However, those who feel it is not working for them or their business will have the option to do something about it.

I look forward to receiving and reading your responses.

A handwritten signature in black ink that reads "Neil Bibby". The signature is written in a cursive style.

**Neil Bibby MSP**  
**February 2017**

## HOW THE CONSULTATION PROCESS WORKS

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at—

<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at:

**Neil Bibby MSP, Room M1.11, Scottish Parliament, Edinburgh, EH99 1SP**  
**Email:** [Neil.Bibby.msp@parliament.scot](mailto:Neil.Bibby.msp@parliament.scot); **telephone:** 0131 348 6385.

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website under Parliamentary Business/Bills/Proposals for Members' Bills/Session 5 Proposals:

<http://www.parliament.scot/parliamentarybusiness/Bills/12419.aspx>

## AIM OF THE PROPOSED BILL

The aim of this proposal is to ensure that tenants of large pub companies who have a “tied” arrangement are treated fairly, enjoy a fair share of the rewards of the business and are no worse off than free-of-tie tenants. “Tied” tenants have a contractual obligation to buy some or all of their products from the owning company (often known as “pubcos”).

Currently, many tied tenants face issues including lack of transparency; high cost of tied products; increased levels of rent; and pub companies not complying with agreements and obligations, all of which often leave them significantly worse off than pubs which have no tied arrangement.

My proposed Bill would tackle those issues by introducing a **statutory Scottish Pubs Code**, to govern the relationship between tied tenants and their pub company owners, and a **Scottish Pubs Code Adjudicator** to enforce the Code.

Legislation to do exactly this was passed by the UK Parliament in 2015 for England and Wales, where there is now a Pubs Code Adjudicator and a Pubs Code in place thanks to Part 4 of the Small Business, Enterprise and Employment Act 2015<sup>1</sup>. A new voluntary code was recently introduced in Scotland but is not adhered to by all pub companies and does not go as far as the statutory code in England and Wales. My proposal would therefore ensure that tied pubs in Scotland would be subject to similar legislation, protection and opportunities as those in England and Wales.

## BACKGROUND

Now that there is a statutory Pubs Code and Pubs Code Adjudicator for tied pubs owned by large companies in England and Wales, it is important to understand the implications of that for Scotland’s tied pubs sector, and the case for change.

### Pubs in Scotland – facts and figures

The Scottish Beer and Pub Association states on its website that—

“The brewing and pub industries support the employment of 60,000 people in Scotland. Some 72 per cent of these people are directly employed in the industry, and of these, 40 per cent are aged under 25. Individuals working in these jobs earn a combined £767 million per year. The industry contributes £1.6 billion to the Scottish economy and generates £972 million in tax revenues, with annual investment of £69 million.”<sup>2</sup>

---

<sup>1</sup> The Small Business, Enterprise and Employment Act 2015. Part 4. Available at: <http://www.legislation.gov.uk/ukpga/2015/26/part/4/enacted>.

<sup>2</sup> Scottish Beer and Pub Association. Available at: <http://www.scottishbeerandpub.com/facts-figures/economic-contribution/>.

There are several different models for owning and managing pubs in the UK and Scotland—

- **free houses** – pubs that are owned/leased and managed by individuals who have freedom to decide what products to buy, stock and sell;
- **tied** – pubs that are owned by a pub company or brewery and are rented to individuals who are required to buy some or all of their products from that company/brewery;
- **managed** – pubs that are owned by a pub company or brewery and employ a manager and staff to run the pub;
- **free of tie tenant/lease** – pubs owned by a pub company or brewery who rents the pub to an individual, but which have no tie i.e. no requirement to buy specific products from the company/brewery.

In Scotland, the majority of pubs, 64%, operate on a free house basis; 17% are tied pubs; 13% are managed, and the remaining 5% operate on a free-of-tie tenant/lease basis. This is the same basic ranked order as in the UK as a whole, but in the UK there is a much higher proportion of tied pubs, and a much smaller gap between the number of free houses and tied pubs, with 43% free houses and 39% tied pubs. The percentage of managed and free of tie pubs is broadly similar<sup>3</sup>.

A 2014 survey commissioned by the Campaign for Real Ale (CAMRA) stated that there were 4,663 pubs in Scotland, of which 1,038 were tied pubs (CGA Strategy, food and drink consultants)<sup>4</sup>. The Scottish Beer and Pub Association website<sup>5</sup> give figures of 4,900 pubs in total, of which 850 are tied pubs. Figures in a 2015 Scottish Government news release<sup>6</sup> state that 538 of those estimated 850 tied pubs figure are owned by Pubcos covered by the 2015 Act. In July 2016, following an enquiry, the Scottish Beer and Pub Association gave me latest figures of 942 tied pubs in Scotland, 520 of which are owned by companies covered by the Code 2015 Act and the Code in England and Wales.

This proposal only relates to those pubs operating on a tied basis.

### **What are tied pubs?**

Tied pubs are so called because there is a contract between the owner and the tenant which means that the tenant is obliged to purchase at least some of their beer, and

---

<sup>3</sup> Scottish Beer and Pub Association: Pubs in Scotland facts and figures. Available at: <http://www.scottishbeerandpub.com/facts-figures/pubs-in-scotland/>.

<sup>4</sup> Statistics from a 2014 survey commissioned by the Campaign for Real Ale (CAMRA) and carried out by CGA Strategy: <http://www.camra.org.uk/documents/10180/36197/CGA+Survey+Scotland/6f5bf4c5-1cf3-445f-8cdf-2d1904c61b20>.

<sup>5</sup> Scottish Beer and Pub Association: Pubs in Scotland facts and figures. Available at: <http://www.scottishbeerandpub.com/facts-figures/pubs-in-scotland/>.

<sup>6</sup> Scottish Government (2015). Statement on tied pubs. Available at: <http://news.scotland.gov.uk/News/Minister-announces-study-on-pub-tenancies-190d.aspx>.

sometimes other products too, from the owner (a particular brewery or pub company). The tied agreement operates on the basis that the rent paid by the tenant consists of “dry” and “wet” elements. The dry element is the rent for the pub premises itself (sometimes including insurance) and, in theory at least, this is often set at a lower rate than market value, to take account of the additional wet rent, which is the price paid for the beer and other products which have to be purchased from the pub company at a higher than normal wholesale value.

Perceived advantages of the tied model include it making it easier for some people to enter the industry (renting rather than buying a pub); making economies of scale possible (tenants paying less for fixtures and fittings); and enabling some tenants to benefit from additional extras to help drive up business, such as satellite television or, more recently, Wi-Fi, at reduced, or even no, cost.

### **Problems with the tied pub system**

The UK Parliament in Westminster has seen many years of investigation and inquiry into the tied pub sector, including four select committee inquiries (in 2004<sup>7</sup>, 2009<sup>8</sup>, 2010<sup>9</sup> and 2011<sup>10</sup>). Those years of inquiry established a body of evidence from tenants which clearly identified that there were significant concerns and problems with the tied pub model and the relationship between large pub companies and their tenants.

During those inquiries, tenants reported issues<sup>11</sup> including—

- delay in opening rent review negotiations;
- lack of transparency in those negotiations and in other matters;
- failure to carry out agreed repairs;
- ignoring verbal agreements;
- harassment of tenants when they were vulnerable through bereavement;
- high cost of tied products;
- increased levels of rent; and

---

<sup>7</sup> House of Commons Trade and Industry Committee (2004). Pub Companies, Second Report of Session 2004-5. Available at: <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmtrdind/128/128i.pdf>.

<sup>8</sup> House of Commons Business And Enterprise Committee (2009). Pub Companies Third Special Report of Session 2008–09. Available at: <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmberr/798/798.pdf>.

<sup>9</sup> House of Commons Business, Innovation and Skills Committee (2010). Pub companies: follow-up: fifth Report of Session 2009–10. Available at: <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmbis/138/138.pdf>.

<sup>10</sup> House of Commons Business, Innovation and Skills Committee (2011). Pub Companies: Tenth Report of Session 2010–12. Volumes 1 and 2 available at: <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmbis/1369/1369i.pdf> and <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmbis/1369/1369vw.pdf>.

<sup>11</sup> UK Government (2015). Pub companies and tenants: Pubs Code and adjudicator. Final Stage Impact Assessment. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/408449/bis-15-64-pubs-statutory-code-and-adjudicator-final-stage-impact-assessment.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408449/bis-15-64-pubs-statutory-code-and-adjudicator-final-stage-impact-assessment.pdf).

- a lack of compliance with other agreements and obligations.

Many of these problems were believed to have occurred due to an inherent inequality between the bargaining power of landlords and tenants.

The evidence also suggested that the balance of the tied pub arrangements has shifted over the years, and that the cost of the dry rent is no longer sufficiently reduced (if at all – there were reports of some tied rents being higher than those on non-tied premises) to negate the impacts of the wet rent, i.e. having to buy products at inflated prices. The result of this is that many of those operating in the tied system are facing much higher costs than their non-tied competitors, and are struggling to make a living.

According to research published in 2013<sup>12</sup> by CAMRA, tied pubs often pay well over 50% more for products than the wholesale price, with examples given of 77% more for a keg of Fosters, 67% more for a keg of San Miguel and 55% more for a keg of Heineken. The research also showed that tied licensees are an average of £13,000 a year worse off than non-tied licensees. Drawing on this research, the CAMRA submission to the UK Government's consultation on the proposals which ended up in the 2015 Act gives clear and persuasive evidence of the problems being faced by tenants. This includes a number of striking case studies which vividly highlight the challenges tenants are faced with because of the tied arrangement.

### **UK legislation passed in 2015**

The years of inquiry at Westminster established a robust evidence base for change and the Coalition Government at Westminster announced in 2014 that it would legislate to establish a statutory Code and Adjudicator, which it did in the Small Business, Enterprise and Employment Act 2015<sup>13</sup>. This contains, in Part 4, the requirement for a Pubs Code for tied owners and tenants, and the establishment of a Pubs Code Adjudicator to enforce the Code.

A key provision of the 2015 Act, which was not included in the original Bill, was the introduction of a **Market Rent Only (MRO) option** for tenants of tied pubs owned by large companies. This essential provision was added to the Bill following an amendment brought forward by Greg Mulholland MP. It gives tenants the ability, in certain circumstances, to opt-out of the contractual obligation to buy certain products from the owner. Instead, tenants can opt to pay a market value dry rent only, either at a level agreed with the owner or set by an independent assessor, and source their own products as other tenants and owners do, thereby ending the tie, and the wet element of their rental agreement.

---

<sup>12</sup> Pub Companies and Tenants: A Government Consultation: Response from CAMRA, the Campaign for Real Ale, June 2013 (including CGA Strategy Licensee Survey Report). Available at: <http://www.camra.org.uk/documents/10180/21560/Response+from+CAMRA+-+Pub+Companies+and+Tenants+Consultation.pdf/d3b88743-f320-47eb-9293-896b2afddfa2>.

<sup>13</sup> The Small Business, Enterprise and Employment Act 2015. Available at: <http://www.legislation.gov.uk/ukpga/2015/26/enacted>.

The 2015 Act and the 2016 draft regulations set out the circumstances where tenants can request a MRO option, including when there is a significant increase in the price of a product or service; when a rent agreement or contract is due for renewal; or at the point of a rent review or rent assessment. There are provisions for the MRO right to be set aside in circumstances where a pub company intends to invest significantly in the pub.

Under the 2015 Act, the Pubs Code will apply to those pub companies which own 500 or more pubs in England and Wales. The six pubcos understood to be affected by the 2015 Act are: Greene King; Marstons; Star Pubs and Bars (Heineken); Admiral Taverns; Punch Taverns; and Enterprise Inns, and it is estimated that 13,000 pubs will be affected<sup>14</sup>. Two of these pubcos, Marstons and Enterprise Inns, currently appear to have no pubs in Scotland.

The detail of the Pubs Code and the associated fees, costs and financial penalties were left to regulations, and the UK Government consulted in late 2015 on how to implement the Pubs Code and Pubs Code Adjudicator, and on the draft regulations. In April 2016 the UK Government published its response<sup>15</sup> to that consultation process. As a result of the consultation the UK Government made a number of changes to the original proposed draft regulations. Revised drafts of the regulations were published on 13 June 2016<sup>16</sup>. These regulations<sup>17</sup> were subsequently approved by the UK Parliament and came into force on 21 July 2016<sup>18</sup>. On 19 August 2016 an additional consultation has been issued (closing on 30 September 2016) seeking views on draft guidance explaining how the Pubs Code Adjudicator will investigate and enforce breaches of the code<sup>19</sup>. The UK Government has also published a number of fact sheets<sup>20</sup> summarising the main parts of the Code.

---

<sup>14</sup> House of Commons (April 2016) Debate Pack: The Pubs Code and the Adjudicator. Available at: <http://researchbriefings.files.parliament.uk/documents/CDP-2016-0079/CDP-2016-0079.pdf>.

<sup>15</sup> UK Government (April 2016). Pubs Code and Pubs Code Adjudicator. Government Response to the Consultation. Available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/516713/bis-16-229-government-response-2016-pubs-code-and-pubs-code-adjudicator.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/516713/bis-16-229-government-response-2016-pubs-code-and-pubs-code-adjudicator.pdf).

<sup>16</sup> The Pubs Code etc. Regulations 2016 (draft). Available at:

<http://www.legislation.gov.uk/ukdsi/2016/9780111147481/contents> and The Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016 (draft). Available at:

<http://www.legislation.gov.uk/ukdsi/2016/9780111147498/contents>.

<sup>17</sup> The Pubs Code etc. Regulations 2016. Available at:

<http://www.legislation.gov.uk/ukdsi/2016/790/contents/made>.

<sup>18</sup> UK Government press release (21 July 2016). Available at: <https://www.gov.uk/government/news/pubs-code-comes-into-force>.

<sup>19</sup> Open consultation: Pubs Code Adjudicator: investigation and enforcement - draft guidance. Available at: <https://www.gov.uk/government/consultations/pubs-code-adjudicator-investigation-and-enforcement-draft-guidance>.

<sup>20</sup> UK Government Pubs Code factsheets (21 July 2016). Available at: <https://www.gov.uk/government/collections/pubs-code-factsheets>.

On 2 May 2016, Paul Newby took up the role of Pubs Code Adjudicator for England and Wales<sup>21</sup>.

The House of Commons Library has published two informative notes on the background to, and passage of, the legislation, as follows—

- Pub companies, pub tenants & pub closures: background history (up to 2014): <http://researchbriefings.files.parliament.uk/documents/SN06740/SN06740.pdf>; and
- Pub companies, pub tenants & pub closures: introducing statutory regulation (2014-15): <http://researchbriefings.files.parliament.uk/documents/SN07074/SN07074.pdf>.

### **The case for change in Scotland**

The case for change in Scotland mirrors that which drove change in England and Wales, and which is well summarised in the UK Government's Impact Assessment for Part 4 of the 2015 Act. This stated that—

“Government intervention is needed to ensure the fair treatment of tenants of tied pubs by large pub companies. Evidence of a problem has come from four Select Committee investigations over the last decade and a steady and continuous stream of correspondence from tenants. These poor outcomes for tenants are driven by features of the market and exacerbated by the nature of the tie between pub companies and tenants. In particular the market is characterised by asymmetric information, imbalance of bargaining power, behavioural biases and lock-in through the tie. Given the evidence, particularly from the Select Committee reports, Ministers believe there is reason to intervene on the basis of fairness to rebalance outcomes.”<sup>22</sup>

That Impact Assessment also states that “a self-regulatory approach has been tried and was found wanting by the Select Committee in 2011 and the Government in 2012.” A recently introduced new voluntary code in Scotland (see details below) is more self-regulation which has been shown in England and Wales to not be effective in addressing the problems faced by tied pub tenants.

In August 2014 CAMRA commissioned CGA Strategy to survey<sup>23</sup> tied pub tenants in Scotland in order to better understand the impact of the tied tenant system. A random

---

<sup>21</sup> Pubs Code Adjudicator for England and Wales. Details at: <https://www.gov.uk/government/organisations/pubs-code-adjudicator>.

<sup>22</sup> UK Government (2015). Pub companies and tenants: Pubs Code and adjudicator. Final Stage Impact Assessment. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/408449/bis-15-64-pubs-statutory-code-and-adjudicator-final-stage-impact-assessment.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408449/bis-15-64-pubs-statutory-code-and-adjudicator-final-stage-impact-assessment.pdf).

<sup>23</sup> CGA Strategy (September 2014). Scottish Tied Pub Licensee Survey:

sample base of 200 leased/tenanted pubs was polled (an estimated 20-25% of all tied pub tenants in Scotland) covering outlets from across the country. CAMRA believes that unfair business practices in the tied pub sector in Scotland have resulted in higher prices for pub-goers, lower investment in the sector and ultimately a higher rate of pub closures.<sup>24</sup>

The results of the Scottish survey make striking reading—

- 96.5% of all respondents believed that paying a reduced rent did not fully take into account the higher prices they paid for their tied products;
- Only 3% had a positive sentiment about the tie agreement (with 63.5% negative and 33.5% neutral);
- 99% of respondents felt that the Scottish Government should act to ensure the protections afforded to tied licensees in England and Wales also applied in Scotland;
- Only 4% of tenants had an annual income of over £30,000, with 31.5% having an income of between £15,000 and £30,000, 54% having an income of between £10,000 and £15,000 , and 10.5% having an income of £10,000 or less;
- 74% of respondents considered themselves worse off as a result of their tie. Only 1.5% felt they were better off (the remainder were either unsure or neither better or worse off).

There is no definitive published list of companies which own tied pubs in Scotland. The CGA Strategy survey<sup>25</sup> in 2014 lists the Pubcos that have the most tied pubs in Scotland (rather than the Pubcos with the most tied pubs in the UK) as: Punch Taverns; Star Pubs and Bars (Heineken); Iona Pub Partnership; Rosemount Taverns; and Trust Inns, but does not state how many tied pubs each of these companies operate in Scotland. However, other pubcos with a large share of the UK market also have a presence in Scotland, including Admiral Taverns and Greene King, and there are also some Scotland focussed companies, such as Kingdom Taverns and Caledonian Heritable, which also own tied pubs in Scotland. The Scottish Beer and Pub Association provided the following details on request in summer 2016 (those marked with a \* are covered by the England and Wales pub code legislation and those marked with a ^ are signatories of the voluntary code in Scotland)—

---

Methodology & Key Findings Overview: Report produced by CGA Strategy for CAMRA. Available at: <http://www.camra.org.uk/documents/10180/36197/CGA+Survey+Scotland/6f5bf4c5-1cf3-445f-8cdf-2d1904c61b20>.

<sup>24</sup> Campaign for Real Ale (CAMRA). News Release. Available at: [http://www.camra.org.uk/widget/press-releases/-/asset\\_publisher/R16Ta0pf6w5B/content/camra-welcomes-holyrood-s-commitment-to-investigate-the-tied-pub-relationship](http://www.camra.org.uk/widget/press-releases/-/asset_publisher/R16Ta0pf6w5B/content/camra-welcomes-holyrood-s-commitment-to-investigate-the-tied-pub-relationship).

<sup>25</sup> CGA Strategy (September 2014). Scottish Tied Pub Licensee Survey: Methodology & Key Findings Overview: Report produced by CGA Strategy for CAMRA. Available at: <http://www.camra.org.uk/documents/10180/36197/CGA+Survey+Scotland/6f5bf4c5-1cf3-445f-8cdf-2d1904c61b20>.

<u>Pubco</u>	<u>No. of pubs in Scotland</u>	<u>No. of tied pubs in Scotland</u>
Punch Taverns*^	Not known	255
Belhaven/Greene King/Spirit Leased*^	194	157
Caledonian Heritable	approx. 150	50
Star Pubs & Bars/Heineken*^	approx. 136	108
G1 Group/Iona Pub Partnership	approx. 100	90
Trust Inns^	approx. 60	54
Hawthorn Leisure^	Not known	129
Admiral Taverns*^	Not known	17
Kingdom Taverns	39	32
Rosemount	50	50
<b><u>Total number of tied pubs</u></b>		<b><u>942</u></b>

The Bill which results from this consultation proposal will need to make it clear who the Scottish Pubs Code would apply to, just as the 2015 Act did for England and Wales. Obviously the limit of only applying the Code to those companies which own 500 or more tied pubs would not be feasible in Scotland, given the much smaller scale of the sector. There would, however, be a number of other options.

There may be merit in moving away from the approach taken in England and Wales, where the Code only applies to companies owning 500 tied pubs or more, and applying the Scottish Code to all tied pubs in Scotland. If so, thought would need to be given whether to include the MRO option within this, or limit the MRO option to larger companies only. In order to come to a decision on that, the consequences of extending the Code to all Scottish tied pubs, and also of making the MRO options open to all tied pubs in Scotland, would need to be well understood. This is an issue that should be informed by those working in the industry, both owners and tenants, and I would therefore welcome views on this (see the questions section below).

### **Publication of voluntary Scottish pubs code of practice**

On 21 July 2016, in response to the Pubs Code coming into force in England and Wales, the Scottish Beer and Pub Association published a voluntary code of practice for tied pubs in Scotland<sup>26</sup>. The code replaces the UK Industry Framework Code version 6<sup>27</sup> and previous individual company codes. The Code is supervised by the Pub

<sup>26</sup> Scottish Beer and Pub Association (2016). Pub Sector – Scotland Code of Practice. Available at: <http://www.scottishbeerandpub.com/wp-content/uploads/2016/07/Code-of-Practice-Scotland.pdf>.

<sup>27</sup> British Beer and Pub Association. UK Pub Industry Framework Code, Sixth Edition (2013). Available at: <http://flva.co.uk/wp-content/themes/flva/pdf/BBPA-V6-feb-13.pdf>

Governing Body<sup>28</sup>. Admiral Taverns Limited; Belhaven/Greene King plc; Hawthorn Leisure Limited; Punch Taverns plc; Star Pubs & Bars/HEINEKEN UK Limited; and Trust Inns Limited have all signed up to abide by the code, which means six of the ten companies listed above have signed up to the code (covering 720 of the 942 tied pubs as listed above).

The Code sets out industry requirements relating to—

- Letting of Premises;
- Rent Reviews;
- Agreement Renewal;
- Interaction with Landlord;
- Operation of AWP's;
- Use of Flow Monitoring Equipment;
- Complaints Procedure; and
- Surrender of Tenancy.

However, whilst a step in the right direction, this voluntary code does not remove the need for Scotland to have a statutory pubs code and pubs code adjudicator, given that—

- the code of practice is voluntary, not compulsory;
- only 6 of the 10 pub companies with tied pubs in Scotland have signed up to abide by the code, leaving 222 pubs not covered;
- the code does not go as far as the pubs code in England and Wales and does not contain the crucial market rent only option for tenants;
- prior to the introduction of the statutory code and adjudicator in England and Wales in 2016 there was a similar voluntary code, revised and amended several times, and which was deemed to not be sufficiently effective<sup>29</sup>, hence the introduction of statutory measures; and
- the code is regulated by industry representatives rather than by an independent person/body outside of the industry.

### **Scottish Parliament/Scottish Government action to date**

On 20 May 2015, Paul Martin MSP led a Member's Business Debate<sup>30</sup> in the Scottish Parliament on the following motion—

---

<sup>28</sup> Details available at: [www.thepubgoverningbody.co.uk](http://www.thepubgoverningbody.co.uk).

<sup>29</sup> Pub companies, pub tenants & pub closures: background history (up to 2014). Operation of the voluntary code, pages 6-12. Available at: <http://researchbriefings.files.parliament.uk/documents/SN06740/SN06740.pdf>.

<sup>30</sup> Scottish Parliament Official Report. 20 May 2015. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9958&i=91471>.

“That the Parliament notes calls for a statutory code of practice for pub companies to be implemented in Scotland; understands that members of the UK Parliament recently amended the Small Business, Enterprise and Employment Bill to introduce a code of practice designed to govern the relationship between pub companies and their tenants in England and Wales; notes the view that Scotland should have an adjudicator to protect hard-working licensees, including in Glasgow Provan, and that this would allow licensees to offer a wider selection of beers and promote market competition, and recognises that a Campaign for Real Ale (CAMRA) survey found that 99% of rent-tied pub tenants in Scotland would support such a move.”

The debate showed strong support for taking action on this issue in Scotland, with members of all parties (the SNP, Labour, Conservative, Liberal Democrat and Green) speaking in support of the motion and highlighting the importance of pubs to communities across Scotland, and the importance of giving Scottish tenants freedom to choose to opt in to a tie, or to opt out of a tie, depending on what would be best for their business. The debate highlighted the view of Paul Waterson, chief executive of the Scottish Licensed Trade Association, who said—

“Our message remains clear—we need parity with the rest of the UK, and we need it fast.”

Following the debate, and in response to it, on 20 May 2015 the Scottish Government announced<sup>31</sup> it would commission research into tied pubs, seemingly as a reaction to the legislation passed by the UK Parliament for England and Wales. The 20 May 2015 statement from Scottish Government concludes—

“Before Scottish Ministers can commit to the legislative route it is important to carry out this research - which will help us come to a view. We will then be in a better position to consider whether legislation should be introduced and who it should apply to – which may be different to that identified in England and Wales where the make-up of the sector is very different to Scotland.”

However there was no further update on this issue by the Scottish Government, until it answered a Parliamentary Question by Neil Bibby MSP on 22 June 2016, when the Minister for Business, Innovation and Energy stated—

“Research into the tied-pub sector is expected to be completed and published in autumn 2016. Its findings will be published on the Scottish Government website.”<sup>32</sup>

---

<sup>31</sup> Scottish Government (2015). Statement on tied pubs. Available at: <http://news.scotland.gov.uk/News/Minister-announces-study-on-pub-tenancies-190d.aspx>.

<sup>32</sup> Scottish Parliament. Daily Written Answers Friday 24 June 2016. S5W-00601. Available at: <http://www.scottish.parliament.uk/S5ChamberOffice/WA20160624.pdf>.

On 6 December 2016 that research<sup>33</sup> was published and concluded “that the evidence collected did not suggest that any part of the pub sector in Scotland was unfairly disadvantaged”. The research recommended that “further dialogue between the relevant trade bodies, government, and other interested parties, should continue before making any changes to legislation.”

The Minister, Paul Wheelhouse MSP, stated—

“The Scottish Government will now engage with pub sector interests to discuss the findings of this research and how we can work together to create a more successful sector moving forward.”<sup>34</sup>

This would appear to indicate that the Scottish Government has no plans to legislate on this issue in the foreseeable future.

### **Why legislate?**

As mentioned above, last year the UK Parliament passed the [Small Business, Enterprise and Employment Act 2015](#), an Act which created, in Part 4, a Pubs Code and Pubs Code Adjudicator in England and Wales, including creating the MRO option for tenants. However, the Act does not apply to Scotland and, despite the publication by the Scottish Beer and Pub Association in July 2016 of a new voluntary code of practice, there are no alternative statutory provisions in Scotland to regulate tied pubs in the same way and give tenants the same freedoms and flexibility.

The options are therefore to either do nothing and rely on the current self-regulation of the industry, perhaps supported by various forms of additional guidance from Government; persuade the UK Parliament to extend the scope of the 2015 Act provisions to Scotland (which would require the Scottish Parliament’s consent under the Sewel Convention); or to bring forward separate legislation in Scotland.

Doing nothing will not help improve the current situation, and self-regulation does not appear to have brought about the desired changes (and there is no reason to think that the new voluntary code will do anything to change that). Extending the UK legislation to Scotland would require action by the UK Parliament and support from the UK Government, and the process could be slow and uncertain.

I believe that introducing legislation in the Scottish Parliament to establish a Scottish Pubs Code and Scottish Pubs Code Adjudicator is the best way to give the tenants of Scotland’s tied pubs similar rights and protections as their counterparts in England and

---

<sup>33</sup> Scottish Government (2016). Research on the Pub Sector in Scotland - Phase 1 'Scoping Study'. Available at: <http://www.gov.scot/Resource/0051/00511075.pdf>.

<sup>34</sup> Scottish Parliament. Written answer 6 December 2016. S5W-05341. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-05341&ResultsPerPage=10>.

Wales, including the essential MRO option, within a legislative framework fit for Scottish circumstances.

Establishing a statutory code in Scotland is very important, as it will go beyond any guidance or encouragement from the sector or from Government and give tenants of tied pubs in Scotland clear legal rights and a clearly defined legal framework for owners and tenants to operate within. Likewise, it is equally important that, having created a code to govern the tied pub sector, an adjudicator is appointed to monitor and enforce that code.

### **Is the Scottish Parliament able to legislate?**

There is currently some uncertainty whether the Scottish Parliament would be able to pass the legislation outlined in this consultation document as there are several issues which require further consideration. Two of the more significant issues which require further consideration relate to competition policy and European Convention on Human Rights (ECHR) issues as follows—

- The Scotland Act 1998<sup>35</sup> reserved certain matters to the UK Parliament to legislate on, one of which was: “Regulation of anti-competitive practices and agreements; abuse of dominant position; monopolies and mergers.” When the pubs code legislation for England and Wales passed through the UK Parliament the UK Government stated that, in its view, this was not a competition issue and was therefore not reserved and would be a matter for the Scottish Parliament to consider if it chose to do so<sup>36</sup>. The UK Government bases its view on an Office of Fair Trading investigation and judgement that this was not a competition issue as the tie (and therefore any interference with the tie) was not likely to have a detrimental effect on consumers. The Scottish Government has also stated that the UK consultation recognised that this was not a reserved issue<sup>37</sup>, and has also, as stated above, given consideration to possibly legislating on this issue;
- The Scotland Act 1998 also places a duty on Scottish Ministers and the Scottish Parliament to act in accordance with ECHR. It was acknowledged that the pubs code legislation for England and Wales engaged Article 1 of Protocol 1 (A1P1 - right to property) of the ECHR and the UK Government concluded that, in its

---

<sup>35</sup> Scotland Act 1998 c.46, Schedule 5. Available at:

<http://www.legislation.gov.uk/ukpga/1998/46/schedule/5>.

<sup>36</sup> E.g. Department for Business, Innovation and Skills (April 2013). Pub Companies and Tenants: A Government Consultation. Paras 3.9 and 3.10. Available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/363475/13-718-pub-companies-and-tenants-consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/363475/13-718-pub-companies-and-tenants-consultation.pdf) and Department for Business, Innovation and Skills (2016).

Government Response to the Consultation. Page 10. Available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/516713/bis-16-229-government-response-2016-pubs-code-and-pubs-code-adjudicator.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/516713/bis-16-229-government-response-2016-pubs-code-and-pubs-code-adjudicator.pdf).

<sup>37</sup> Official Report, Written Answers, 24 June 2013, S4W-15595. Available at:

[http://www.scottish.parliament.uk/S4\\_ChamberDesk/WA20130624.pdf](http://www.scottish.parliament.uk/S4_ChamberDesk/WA20130624.pdf).

view, the provisions were justified and proportionate<sup>38</sup>. There would be a need, of course, to consider A1P1 issues fully, from the perspective of taking legislation through the Scottish Parliament.

While I am encouraged by the views of the UK and Scottish Governments, I recognise that these are complex issues and I have therefore sought legal advice, and will take that into account – together with any relevant responses to the consultation – in deciding how to proceed.

## **DETAIL OF THE PROPOSED BILL**

The proposal is to largely replicate, for Scotland, Part 4 of the 2015 Act to establish a Pubs Code and Pubs Code Adjudicator in Scotland. A crucial part of the Code will be the establishment of the MRO option (detailed above) for tied pub tenants in Scotland, an option which is now open to tenants in England and Wales.

### **Underpinning principles**

The 2015 Act states<sup>39</sup> that the Pubs Code must be consistent with two principles, which also underpin this proposed Bill—

- the principle of fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants; and
- the principle that tied pub tenants should not be worse off than they would be if they were not subject to any product or service tie.

### **Contents of the Bill**

As well as establishing the Code and Adjudicator, the 2015 Act also contains provisions for—

- reviewing the Code;
- dealing with inconsistencies with the Code;
- the arbitration role of the Adjudicator;
- investigations by the Adjudicator;
- enforcement by the Adjudicator (including financial penalties);
- the scope of the advice and guidance role of the Adjudicator;
- the reporting requirements of the Adjudicator;
- the funding of the Adjudicator; and

---

<sup>38</sup> The Small Business, Enterprise and Employment Bill (2014). Explanatory Notes. Pages 129 – 130. Available at: <http://www.publications.parliament.uk/pa/bills/cbill/2014-2015/0011/en/15011en.pdf>.

<sup>39</sup> The Small Business, Enterprise and Employment Act 2015. Part 4, section 42(3). Available at: <http://www.legislation.gov.uk/ukpga/2015/26/part/4/enacted>.

- the supervision of the Adjudicator.

These are issues that would need further consideration in determining the detail of the Bill and ensuring that a proportionate and appropriate Code was established fit for Scottish circumstances.

### **Contents of the Code**

As is the case with the 2015 Act, the proposal is that a Scottish Pubs Code would not itself be set out in the Bill, but rather the Bill would require Ministers to make regulations containing a Code, and set parameters for what the Code should cover. This approach would strike an appropriate balance between flexibility to amend the details of the Code relatively easily without delegating to Ministers powers that are too open-ended.

On 21 July 2016 the final regulations containing the proposed Pubs Code for England and Wales were published<sup>40</sup>. These regulations—

- set out what information pub companies must provide to their tenants;
- set out the circumstances in which rent proposals will be made;
- require pub companies to provide assessments of dry and wet rents;
- make full provisions for a MRO option; and
- detail procedures for dealing with disputes.

These regulations were the result of further consultation after the 2015 Act came into force to ensure full collaboration with all those in the sector who will be affected, and the proposal is that this approach would be mirrored in Scotland.

### **Adjudicator's role and powers**

The 2015 Act established an Adjudicator to—

- provide advice and guidance to tenants and pub companies;
- arbitrate in disputes in certain circumstances;
- investigate and report on alleged breaches of the code; and
- make recommendations as a result of an investigation, including requiring publication of information and imposing financial penalties.

It would seem appropriate that the Scottish Adjudicator has the same, or broadly the same, role and powers as the Adjudicator in England and Wales. However, issues such as whether it is appropriate for the Scottish Adjudicator to be able to impose financial penalties for breaches of the Code would benefit from further consideration. If applied in the Scottish context, financial penalties could very much be encouraged as a matter of

---

<sup>40</sup> The Pubs Code etc. Regulations 2016 (draft). Available at: <http://www.legislation.gov.uk/ukdsi/2016/9780111147481/contents> and The Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016 (draft). Available at: <http://www.legislation.gov.uk/ukdsi/2016/9780111147498/contents>.

last resort but may be an important tool to have available to give the Adjudicator appropriate “teeth”.

## Potential impacts of the Bill

The Bill would predominately impact on three groups of people—

- the **pub companies/breweries** which own pubs run on a tied basis;
- **tenants** of tied pubs; and
- **customers** of tied pubs.

As stated above, the latest number of tied pubs in Scotland is 942. The previous recent estimates of there being 850 tied pubs out of a total of 4,900 pubs in Scotland, or 1,038 out of 4,663, is either 17% or 22% of the overall number of pubs in Scotland. Any tenants of tied pubs who are currently unfairly treated and worse off than non-tied pubs as a result should see a positive impact as a result of the Bill, in terms of increased and improved transparency, access to a wider range of products and greater freedom and flexibility. Should there be any negative impacts in terms of pub closures (detailed below) then those tenants would be impacted upon.

There would be impacts on pub companies which have tied pubs at present and which may need to significantly alter their practices as a result of the Bill. In situations where tenants decide to break the tie, the pub company may see a cost to them due to the loss of the wet rent. In a small number of cases this could potentially lead to some pubs being sold off, a percentage of which may close. The Final Stage Impact Assessment<sup>41</sup> of the 2015 Act at Westminster gave best estimates of indirectly causing 390 pub closures in England and Wales (approx. 2% of the base figure used of 20,000 tied pubs in England and Wales) resulting in an indirect cost to business of £16.7m per year (based on estimates of £43,000 per pub). If there was a similar impact in Scotland, then, using the same rationale and calculations, the proposal would indirectly cause 12 pub closures at a cost to business of £516,000.

Customers may see a change in the range of products offered at pubs which break the tie with a pub company as tied pubs often only offer products from a single supplier, and therefore often have a limited range of beers on sale. Breaking the tie is therefore likely to result in more pubs offering a wider range of beers and other products. Customers would, of course, be affected by any pub closures, but overall should see no notable detrimental impact as a result of the Bill. The Final Stage Impact Assessment for the 2015 Act noted that the competitive nature of the pub industry should mean that there is either no, or very marginal, threat of cost impact to consumers.

---

<sup>41</sup> UK Government (2015). Pub companies and tenants: Pubs Code and adjudicator. Final Stage Impact Assessment. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/408449/bis-15-64-pubs-statutory-code-and-adjudicator-final-stage-impact-assessment.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408449/bis-15-64-pubs-statutory-code-and-adjudicator-final-stage-impact-assessment.pdf).

## Financial implications

It is proposed that the Bill be self-funded and that the associated costs would be direct or indirect costs to businesses. The Pubs Code Adjudicator appointed in England and Wales is funded (including both set-up and running costs) by a levy on the large pub companies affected by the Act. However, the setting of the levy in Scotland, and its impact, will be affected by the number of pub companies caught by the Bill, and the size of those companies, which is yet to be fully understood and determined. If a self-funding levy model was followed in Scotland, there would be various options for determining who should pay the levy, and how much it should be, including—

- applying a fixed levy on all those who the Code applies to;
- applying a proportionate levy which reflect the size and scale of each pub company to which the Code applies (for example, based on a percentage of a company's turnover);
- applying a levy (either fixed or proportionate) only on companies of a certain size (in terms of overall turnover etc)
- applying a levy (either fixed or proportionate) only on companies which own above a certain number (30, 50, 100 etc) of tied pubs in Scotland.

Given that the tied sector in Scotland is much smaller than that in England and Wales, and appears to be more dispersed, it is possible that if a levy was imposed on all pub companies in Scotland owning tied pubs it may be payable by companies operating on a significantly smaller scale than those affected in England and Wales, and therefore could have a more significant impact.

There would be various one-off costs involved in establishing an Adjudicator (such as advertising, interviewing and appointing the Adjudicator and any required staff; accommodation requirements; and various legal and IT costs) and then ongoing running costs of operating the Adjudicator's office and of the Adjudicator carrying out their functions. In the Final Stage Impact Assessment for the 2015 Act the one-off costs were estimated at £540,000, and the annual running costs were estimated at £1.6m. However, as with the potential impacts of the Bill, it is important to note that these were estimates for the cost of the legislation in England and Wales, which has an estimated 20,000 tied pubs, 13,000 of which are expected to be affected by the legislation, compared to the approximately 942 in Scotland. As there are likely to be many fewer cases for a Scottish Adjudicator to consider, the post may not need to be full time, and fewer staff would be needed than are required for the adjudicator in England and Wales. Therefore the cost to business of operating the system in Scotland would likely be less than in England and Wales. However, as noted above, given the much smaller scale of the sector in Scotland, and depending on where the level is set to determine the companies the proposal would apply to, it is possible that the economies of scale involved in funding the Act in England and Wales would be reduced in Scotland. There could therefore be a larger burden on businesses in Scotland, compared to those in England and Wales.

There would also be likely financial implications for tenants and tied pub owners, some of which are outlined above. Tenants should be no worse off and should, in some cases, be better off as a result of the Bill. The Final Impact Assessment of the 2015 Act did note that tenants would be responsible for half of the costs of conducting rent assessments which compared tied and non-tied rent options.

Some pub companies would see a decrease in income and an increase in costs as a result of tenants choosing to end the contractual tie. There should be a balance in these financial implications as effectively the Bill would lead to a transfer of funds from the pub company to the tenant.

As outlined above, it is unlikely that the Bill would lead to any notable increase in prices for consumers.

## **Equalities**

This proposal is fundamentally about fairness, and bringing fairness to those tied tenants who are currently subject to unfair contractual arrangements. The proposal also seeks to establish a similar legal framework between Scotland and England and Wales. Consequently, tenants who currently find themselves economically worse off than those who do not have a tied arrangement should hopefully find themselves with greater flexibility and opportunities to increase their income and financial situation.

An initial Equality Impact Assessment (EQIA) was completed to inform this consultation and showed that, whilst being a proposal with fairness at its centre, the Bill itself should have no disproportionate effect, or indeed any negative or positive effect, on any particular group with characteristics protected by the Equality Act 2010.

## **Sustainable development**

The Bill should have a positive impact on sustainable development by improving outdated contractual arrangements that are not fit for the 21<sup>st</sup> century, 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.

The Bill fits within many of the underpinning principles of sustainable development, such as ensuring a just society; promoting good governance; and achieving a sustainable economy which provides prosperity and opportunity for all. The Bill also achieves its aims without placing any undue burden on environmental limits. The proposal has the potential for improving the wellbeing of tied pub tenants without disproportionately impacting pub companies as a result and is therefore consistent with ensuring a balance between economic, social and environmental needs and objectives and also ensuring that future generations will not be negatively burdened as a result of the proposal.

## QUESTIONS

### SECTION 1 - ABOUT YOU

**1. Are you responding as:**

- an individual – in which case go to Q2A  
 on behalf of an organisation? – in which case go to Q2B

**2A. Which of the following best describes you? (If you are a professional or academic whose experience or expertise is not relevant to the proposal, please choose “Member of the public”)**

- Politician (MSP/MP/Peer/MEP/Councillor)  
 Professional with experience in a relevant subject  
 Academic with expertise in a relevant subject  
 Current or former pub tenants or workers  
 Member of the public

**2B. Please select the category which best describes your organisation:**

- Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)  
 Commercial organisation (company, business)  
 Representative organisation (trade union, professional association)  
 Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)  
 Other (e.g. club, local group, group of individuals, etc.)

**3. 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  
 I would like this response to be anonymous (the response may be published, but no name)  
 I would like this response to be confidential (no part of the response to be published)

Name/organisation:

**4. Please provide details of 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.)**

Contact details:

## **SECTION 2 - YOUR VIEWS ON THE PROPOSAL**

### **Aim and approach**

1. Which of the following best expresses your view of establishing a statutory Scottish Pubs Code and Scottish Pubs Code Adjudicator?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

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

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))
- No
- Unsure

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

3. What do you think would be the main advantages, if any, of establishing a statutory Scottish Pubs Code and Adjudicator?
4. What do you think would be the main disadvantages, if any, of establishing a statutory Scottish Pubs Code and Adjudicator?
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
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

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

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?

**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
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

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

**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?**

- a) The Scottish Pubs Code – including the Market Rent Only option – should apply to all tied pubs in Scotland
- b) The Scottish Pubs Code should apply to all tied pubs in Scotland, but the Market Rent Only option should only apply to tenants of larger pubcos
- 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.**

**9. If you answered “b” or “c” how should larger pubcos be defined (e.g. by size of turnover, number of tied pubs owned in Scotland (if so, how many), etc.)?**

### **Financial implications**

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

**(a) The pub companies which own tied pubs (Pubcos)**

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

**Please explain the reasons for your response**

**(b) Tied-pub tenants**

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

**Please explain the reasons for your response**

**(c) Tied-pub customers**

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

**Please explain the reasons for your response**

**11. How do you think the associated costs of the proposal (predominantly the establishment and on-going running costs of a Scottish Pubs Code Adjudicator) should be funded?**

**Equalities**

**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?**

- Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Unsure

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

**13. In what ways could any negative impact of the Bill on equality be minimised or avoided?**

## **Sustainability of the proposal**

**14. Do you consider that the proposed bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?**

- Yes
- No
- Unsure

**Please explain the reasons for your response**

## **General**

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

### **HOW TO RESPOND TO THIS CONSULTATION**

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

#### **Format of responses**

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

#### *Online survey*

To respond via Smart Survey, please follow this link **(the link will be live from Monday 20 February 2017 to Monday 31 July 2017 (originally 20 June 2017))**:

<http://www.smartsurvey.co.uk/s/TiedPubsBill/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the Data Protection Act 1998. Any information you send in response to this consultation (including personal data and sensitive personal data) will be seen by the MSP progressing the Bill and by specified staff in NGBU, and may be added manually to Smart Survey.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above, or directly from this link:

<https://www.smartsurvey.co.uk/privacy-policy>

### *Electronic or hard copy submissions*

If possible, please submit your response electronically – preferably in MS Word document. Please keep formatting of this document to a minimum, and avoid including any personal data other than your name (or the name of the group or organisation on whose behalf you are responding).

Any additional personal data (e.g. contact details) should be provided in the covering e-mail (or a covering letter).

Please make clear whether you are responding as an individual (in a personal capacity) or on behalf of a group or organisation. If you are responding as an individual, you may wish to explain briefly what relevant expertise or experience you have. If you are responding on behalf of an organisation, you may wish to explain the role of that organisation and how the view expressed in the response was arrived at (for example, whether it reflects an established policy or was voted on by members).

### **Where to send responses**

Responses prepared electronically should be sent by e-mail to:  
[Neil.Bibby.msp@parliament.scot](mailto:Neil.Bibby.msp@parliament.scot)

Responses prepared in hard copy should be sent by post to:

**Freepost TIED PUBS BILL** (no stamp required)

You may also contact Neil Bibby's office by telephone on (0131) 348 6385.

### **Deadline for responses**

All responses should be received no later than **31 July 2017 (original closing date was 20 June 2017)**.

### **How responses are handled**

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received on the website: [www.protectourpubs.scot](http://www.protectourpubs.scot).

As published, responses will normally include the name of the respondent, but other personal data (signatures, addresses and contact details) will not be included.

Copies of all responses will be provided to the Scottish Parliament's Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member's Bill). NGBU will treat responses in accordance with the Data Protection Act 1998. The

summary may cite, or quote from, your response and may name you as a respondent to the consultation – unless your response is to be anonymous or confidential (see below).

I am also obliged to provide copies of all responses to the Scottish Parliament's Information Centre (SPICe). SPICe may make responses (other than confidential responses) available to MSPs or staff on request.

### **Requests for anonymity or confidentiality**

If you wish your response, or any part of it, to be treated as **anonymous**, please state this clearly. You still need to supply your name, but any response treated as anonymous will be published without the name (attributed only to "Anonymous"), and only the anonymised version will be provided to SPICe. If you request anonymity, it is your responsibility to ensure that the content of your response does not allow you to be identified.

If you wish your response, or any part of it, to be treated as **confidential**, please state this clearly. If the response is treated as confidential (in whole or in part), it (or the relevant part) will not be published. However, I would still be obliged to provide a complete copy of the response to NGBU, and a copy of any non-confidential parts (i.e. a redacted copy) to SPICe when lodging my final proposal. As the Scottish Parliament is subject to the Freedom of Information (Scotland) Act 2002 (FOISA), it is possible that requests may be made to see your response (or the confidential parts of it) and the Scottish Parliament may be legally obliged to release that information. Further details of the FOISA are provided below.

In summarising the results of this consultation, NGBU will aim to reflect the general content of any confidential response in that summary, but in such a way as to preserve the confidentiality involved. You should also note that members of the committee which considers the proposal and subsequent Bill may have access to the full text of your response even if it has not been published (or published only in part).

### **Other exceptions to publication**

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory statements or material. If I think your response contains such material, it may be returned to you with an invitation to provide a justification for the comments or remove them. If the issue is not resolved to my satisfaction, I may then disregard the response and destroy it.

## **Data Protection Act 1998**

As an MSP, I must comply with the requirements of the Data Protection Act 1998 which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or confidentiality. I will not publish your signature or personal contact information, or any other information which could identify you and be defined as personal data.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you specifically wish me to publish information involving third parties you must obtain their consent first and this should be included in writing with your submission.

If you consider that your response may raise any other issues concerning the Data Protection Act and wish to discuss this further, please contact me before you submit your response.

Further information about the Data Protection Act can be found at: [www.ico.gov.uk](http://www.ico.gov.uk).

## **Freedom of Information (Scotland) Act 2002**

As indicated above, once your response is received by NGBU or is placed in the Scottish Parliament Information Centre (SPICe) or is made available to committees, it is considered to be held by the Parliament and is subject to the requirements of the FOISA. So if the information you send me is requested by third parties the Scottish Parliament is obliged to consider the request and provide the information unless the information falls within one of the exemptions set out in the Act, potentially even if I have agreed to treat all or part of the information in confidence or to publish it anonymously. I cannot therefore guarantee that any other information you send me will not be made public should it be requested under FOI. Further information about Freedom of Information can be found at: [www.itspublicknowledge.info](http://www.itspublicknowledge.info).