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## **Economy, Energy and Fair Work Committee Comataidh Eaconamaidh, Lùth is Obair Chothromach**

# **Stage 1 Report on the Tied Pubs (Scotland) Bill**



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# Economy, Energy and Fair Work Committee

Remit: To consider and report on economy and fair work matters falling within the responsibilities of the Cabinet Secretary for Economy, Fair Work and Culture; matters relating to the digital economy within the responsibilities of the Cabinet Secretary for Finance, and matters relating to energy falling within the responsibilities of the Minister for Energy, Connectivity and the Islands.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/economy-committee.aspx>



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# Committee Membership



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# Membership Changes

1. The membership of the Committee changed during the course of this piece of work. Gordon Lindhurst MSP and Maurice Golden MSP joined the Committee on 20 August 2020, replacing Michelle Ballantyne MSP and Dean Lockhart MSP. Gordon Lindhurst MSP became the Committee's Convener on 25 August 2020.

# Introduction and background

2. The pub industry in Scotland is currently facing extremely challenging times. Significant numbers of pubs have closed in the last few decades, for a variety of reasons including changing patterns of alcohol consumption, regulation, competition from cafes and restaurants, and demographic change. Pressures on the industry have been exacerbated in 2020 by Covid-19, with unprecedented restrictions on opening, trading hours and capacity. Although the Tied Pubs (Scotland) Bill was introduced before Covid-19 it is important to acknowledge these additional challenges from the outset. A thriving pub sector is positive for pub owners, brewers, tenants, as well as consumers and the wider economy.
3. The Tied Pubs (Scotland) Bill ("the Bill") was introduced in the Scottish Parliament by Neil Bibby MSP on 3 February 2020.<sup>1</sup> The aim of the Bill is to improve the position of tied pub tenants by requiring the establishment of a Scottish Pub Code. This will set out rules and procedures to govern the relationship between all pub-owning businesses and their tied tenants. The Bill also requires a Scottish Pubs Code Adjudicator (SPCA) to be appointed to apply the code.<sup>2</sup>
4. Broadly speaking, there are three models of pub ownership in Scotland:
  - Freehold - where an individual owns the property in their own name. This requires significant upfront costs (to purchase the property), but then offers the greatest level of freedom. In Scotland, this is the main model for pubs, accounting for around 64% of the market. This is around 3000 pubs.
  - Managed premises - the pub-owning company owns the premises, and employs a manager to run the operation. The manager is an employee, so will have significantly less freedom (but also take on no risk in terms of the success of the operation, beyond their own job security). This model accounts for around 13% of pubs in Scotland. This is around 550 pubs.
  - Tenanted pubs - owned by a pub-owning company, and let out to tenants. This is a low-cost entry to the market. Most tenants in Scotland have a tied lease where they face very few upfront costs but pay rent for the premises and face restrictions on the products they sell (usually beer, but this can include other alcoholic and non-alcoholic drinks, food and other services). Around 20% of Scotland's pubs are tenanted, with the majority of these (17% of the whole market) being tied tenants. This is around 750 pubs.<sup>3</sup>
5. The Bill focuses on those pubs which are tied, although reference is also made to the other models of pub ownership. A tied tenant is someone who leases a pub from a pub-owning business and is required to buy their beer and sometime other products from that business. In return they may pay a lower than usual rent and receive other support from the pub-owning business. This tends to offer lower entry costs into the market, but mean that tied pubs might not be able to achieve the same profit margins as non-tied pubs. Tied pub tenants will usually have a contractual arrangement with the pub-owning company to buy certain products for a higher than normal wholesale cost. This is referred to as 'wet rent' and is supposed to balance the rent of the pub premises, which may be set lower than market value. This is known as 'dry rent'.

6. The Bill will ensure that tied tenants have the option to request a “market-rent-only” (MRO) lease. This means that a tenant can pay the going market rate to rent the pub without having to buy products or services from the pub-owning business, therefore ending the tied relationship. Even if a tenant remains tied, the Bill provides an opportunity to sell at least one 'guest beer'. They will not be restricted to only selling the brands permitted by the pub-owning business.
7. In addition to the MRO option, the Bill proposes the establishment of a Scottish Pub Code and a Scottish Pubs Code Adjudicator (SPCA) to apply the code.
8. The Scottish Pubs Code, and decisions made by the SPCA, must be consistent with the following three principles:
  - that there is fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants
  - that tied pub tenants should not be worse off than they would be if they were not subject to any product or service tie
  - that the tied agreements offer a fair share of risk and reward to both parties

## **The Small Business, Enterprise and Employment Act 2015**

9. The Small Business, Enterprise and Employment Act was passed by the UK Parliament in 2015. That Act ensures that some tied pub tenants in England and Wales are covered by a statutory Pubs Code. The code is governed by a Pubs Code Adjudicator (PCA). That Act applies to those who have tenancies with pub-owning businesses that own 500 or more tied pubs. Introduction of this legislation followed 4 Select Committee inquiries between 2004 and 2011 into the tied pubs model which identified several issues including level of rents and the price of beverages.
10. The proposed Scottish Bill is largely based on this existing legislation in England and Wales. The Bill aims to ensure that Scottish tied pub tenants have at least the same protections and opportunities as those covered by the 2015 Act in England and Wales. The Bill also aims to:
  - adapt the model provided by the 2015 Act to make it fit and appropriate for Scottish circumstances
  - avoid problems experienced in implementing the 2015 Act in England and Wales

## **Scottish Government commissioned research**

11. Following the introduction of legislation in England and Wales, the Scottish Government commissioned a study to help Scottish Ministers decide whether legislation on the operation of pub companies needed to be introduced in Scotland.

12. This research noted that in the last few decades there was a radical change in the pub industry across all geographies. The total number of pubs operating in the UK fell from around 70,000 in 1982 to around 48,000 by 2013. This reduction has been driven by changing patterns of alcohol consumption, regulation, competition from cafes and restaurants, and demographic change.
13. This research concluded that while the pub sector in Scotland faced many challenges, no sub-sector was unfairly disadvantaged. It was not felt that there was a clear need for legislation in this area.
14. The Scottish Government suggested that it had been difficult to get companies, pubs and tenants to engage with the research. It was suggested that this may have been due to unwillingness to provide sensitive personal, business and financial information. It felt there might be some mistrust of the Government. Another reason that was cited was a general lack of interest and a failure to see or understand the need for legislation.<sup>5</sup>

## Committee consideration

15. The Bill was introduced on 3 February 2020. Due to the impact of Covid-19 on the pub industry, the Committee agreed to pause its call for views and evidence sessions, which were due to take place in April 2020. The call for views reopened on 19 May and closed on 14 July 2020. Oral evidence sessions took place in August and September 2020.
16. The Committee invited pub owners, drink suppliers and membership bodies to share their views on the Bill. The Committee received a total of 284 submissions to its call for views, of which a significant portion were responses from a campaign run by CAMRA. In total, responses received through the CAMRA campaign accounted for 241 of the total responses. The CAMRA campaign supports the Bill. Of the remaining submissions, 3 were responses to a Co-operative party campaign (supporting the Bill), 6 were signatures to a submission from pub directors at Belhaven/ Greene King (opposing the Bill) and 10 were from Hawthorne Leisure tenants who also oppose the Bill. The majority of the remaining 24 submissions were made by pub-owning companies, tenants and membership bodies and groups representing either pub-owning companies or tenants. The Committee also received some supplementary evidence after the call for views had closed.
17. The Committee issued an anonymous survey to gather views from pub tenants with experience of tied tenancies and the Scottish Parliament's Information Centre (SPICe) produced a summary of responses received through the survey.<sup>6</sup> In total there were 59 partially completed and 39 fully completed responses to the Committee's survey. The majority of these respondents felt that the Bill would improve the relationship between pub-owning businesses and tenants. The Committee also held an online focus group with 4 pub tenants to explore their views on the Bill. A summary of these views was also produced.<sup>7</sup>
18. The Committee took evidence from two panels of witnesses on 18 August, followed by evidence from the Minister for Business, Fair Work and Skills on 25 August and Neil Bibby MSP, the Member in Charge of the Bill, on 1 September 2020.

19. As with all Bills, the Finance and Constitution Committee invited written evidence on the estimated financial implications of the Bill as set out in its accompanying Financial Memorandum. No responses were received.
  20. At its meetings on 10 March and 25 August 2020, the Delegated Powers and Law Reform (DPLR) Committee considered the delegated powers contained in the Bill. The DPLR Committee's report recommends that regulations under section 1 (which require Scottish Ministers to produce a pubs code) should be subject to a form of super-affirmative procedure rather than the affirmative procedure as is currently proposed. In response, the Member indicated that he could see the advantages of consideration by super-affirmative procedure, which would normally require the Minister to consult on the draft regulations before laying them for approval. Neil Bibby MSP indicated that he would consider whether to seek to amend the Bill, should it progress to Stage 2. <sup>8</sup>
21. The Committee is grateful to all those who provided evidence which helped to inform its scrutiny of the Bill. The Committee notes that 2020 has been a particularly challenging year for the pub industry. We appreciate that people have continued to engage with the Committee's scrutiny of the Bill despite these challenges. Covid-19 has brought issues highlighted in the Bill into focus and the Committee acknowledges that any measures taken, legislative or otherwise, must be long-standing and offer the best solution both now and after the current restrictions ease.

## The need for legislation

22. Views on the Bill are polarised. Those who support the Bill argue that there is an urgent need for legislation to rebalance the risk and reward in tied tenancies. They believe that the pub-owning companies take too large a share of profits meaning that tenants struggle with low incomes. Supporters think that there is a power imbalance between the pub-owning company and the tenant and see the introduction of a market rent only lease option as a vital way of addressing these concerns. Some tenants are concerned by the inflated price paid for stock and the impact this has on their ability to operate a profitable business. Some breweries and microbreweries believe that the Bill will increase consumer choice<sup>9</sup> and tenants told the Committee that some pub-goers agree that the Bill will lead to greater product choice in pubs.<sup>10</sup>
23. Opponents think that there is no need for legislation and believe that the tied tenancy model already works well. Not only do they believe that legislation is unnecessary, they think it would actively damage the pub sector in Scotland. Those who oppose the Bill argue that it would harm investment in the sector and force pub-owning businesses to manage pubs themselves or sell them. They believe it seeks to address a problem that does not exist, and highlight the differences north and south of the border, noting that the number of tied pubs in Scotland is small, with only 17% operating on the tied tenancy model.<sup>11</sup> The pub-owning companies highlighted the entrepreneurial opportunity which the tied pubs model offers people who want to run their own pub, but lack the initial investment to pursue freehold opportunities, and suggest that these opportunities would be curtailed by the legislation.
24. The Minister for Business, Fair Work and Skills said that while he supports the intention of fair and equitable treatment within commercial agreements, more information is required on the scale of the nature of the perceived problem.<sup>12</sup> The Minister suggested it was difficult to determine whether tenants are afraid to come forward and share their experiences or whether large numbers of tenants have not come forward because it is not a substantial problem.<sup>13</sup>
25. Neil Bibby MSP believes the problems experienced in the tied pub sector are "deep-rooted" and "well-documented". He stated that it is "arrogant" and "irresponsible to deny that problems exist in the sector in the face of the evidence" and urged the Committee to "not let the pubcos tell you that there is no problem here."<sup>14</sup> Neil Bibby MSP noted:
- ” If pubcos are good, responsible landlords, what do they have to fear from the bill? If a tied agreement is working well for a tenant, there is no reason to seek redress through a pubs code. However, if tied deals are not working, we need to rebalance the pubcos’ relationships with their tenants to ensure that they do.<sup>15</sup>
26. Neil Bibby MSP suggests that the very fact that debate is polarised, is evidence that there is a problem which must be addressed.<sup>16</sup>

27. These arguments, both in favour of and in opposition to the Bill, will be explored in further detail throughout this report.

## Income for tied pub tenants

28. Those who support the Bill argue that the provisions would give tenants leverage to negotiate a fairer deal with their pub-owning business, and in turn secure a higher income.
29. For the British Pub Confederation, the share of profit which pub-owning companies take is the key issue which the Bill seeks to address. It suggested many tied pub tenants do not earn enough money to make a living.<sup>17</sup>
30. According to the Campaign for Real Ale (CAMRA), a significant proportion of tied tenants in Scotland (over 60%) take home less than £15,000 per annum.<sup>18</sup> This figure is based on a 2014 phone survey carried out by CAMRA with 200 tied tenants in Scotland (approximately one quarter of the market). This survey found that tenant incomes were very low: 10.5% had an income below £10,000, 54% had an income of between £10,000 and £15,000, 31.5% earned between £15,000 and £30,000 and just 4% earned over £30,000. 74% of the 200 tenants stated that the tie made them worse off.<sup>19</sup> This is the largest and most recent survey of its kind, but it is also now six years old.
31. The Committee heard conflicting evidence on this point, with the British Beer and Pub Association (BBPA) suggesting that the average income of tied tenants, based on 2019 rent reviews, was £38,000.<sup>20</sup> The Committee received robust rebuttals from both sides refuting the accuracy of these figures. The SLTA noted that pub tenants trade through their own legal entities meaning that pub-owning companies will not have access to the financial accounts and tax returns of their entire estate.<sup>21</sup>
32. One tenant told the Committee:
- ” Everyone that works in the building gets a wage but there have been times where we don't have wages for ourselves as the expenses are too high. We pay in rent what we pay in beer, I managed to work out that we pay approximately £35-40,000 extra on beer which reduces our profit right down.<sup>22</sup>
33. Tennent Caledonian Breweries told the Committee that according to the CGA Brand Index, tenanted revenues have declined year on year and are now 8% lower than 2 years ago. It compared this to the free trade where revenues have increased and are now 5% greater than 2 years ago. It said that pub-owning companies take around £28k from each outlet, but in the free of tie model the publican takes 3/4 of the additional margins.<sup>23</sup>
34. However, the pub-owning companies disputed this, stating that mutual benefit was key to the tied pub model. Hawthorn Leisure told the Committee that the tied relationship is a partnership and it would not be in the pub-owning businesses best interests to exploit the tenant. It described a balanced relationship:

” We want to make a profit. However, for us to make a profit it is essential that our tenants make a profit and that the relationship is sustainable and long-term.  
24

35. Hawthorn Leisure indicated that it seeks minimum earnings of £25,000 for its tenants.<sup>25</sup> Star Pubs and Bars told the Committee that there is absolute transparency about the minimum that tenants should earn from the pub, but did not confirm what that minimum is.<sup>26</sup>
36. The Minister for Business, Fair Work and Skills noted that it is in the landlord's "inherent self-interest to ensure that their tenants can earn a decent living, because otherwise why would they want to remain as such?" However, he also noted that if tenants are receiving very low incomes, as suggested by CAMRA, that is something that should be explored further.<sup>27</sup>
37. Neil Bibby MSP cited CAMRA evidence gathered to support the introduction of legislation in England and Wales. He noted that written evidence provided by CAMRA to the UK Government in 2013 states that 57% of large pubco tied licensees earn less than £10,000. He also noted that in 2013, the UK Government department for Business, Innovation and Skills published an impact assessment on the proposed pubs code legislation which estimated the transfer in profits from pub-owning businesses to tenants (in England and Wales) at £102m.<sup>28</sup>

38. The Committee heard evidence from tenants who are trying to live on low incomes. The Committee believes that both the pub owner and the tenant should receive a fair financial return. The Committee received conflicting information on tenant income and felt that small sample sizes and dated information made much of evidence on income levels limited at best. The Committee would have hoped to receive full and transparent data which would have aided scrutiny. It may be that there is inconsistency between the income guaranteed by different pub-owning businesses, but insufficient information was provided by supporters of the bill and its opponents, to gain a full picture. The Committee suggests that independent analysis is needed in this area.

## Pub closures and tenant turnover

39. As previously noted there has been an overall decline in the number of pubs operating across the UK over the last few decades. Whilst it is generally acknowledged that this reduction has been driven by several factors, including changing patterns of alcohol consumption and regulation, supporters of the Bill believe that this legislation could prevent some pub closures and increase tenant retention.
40. Supporters of the Bill linked tenant income levels with both pub closures and business failure. It was suggested that where tenants could not make a living there was high tenant turnover, referred to as "churn".

41. Others argued that some venues are not suited to the tied model and therefore cannot sustain the costs. This results in a high turnover of tenants in these venues.  
29
  42. Neil Bibby MSP raised the issue of "churn" which he suggested was a direct consequence of low wages. He said that he was aware of at least one pub-owning business whose average tenure is around nine months. He said that "we can see the churn in our communities" and noted that tenure has increased in England and Wales since legislation was introduced. The member suggested that the Bill would allow publicans to sustain and grow their businesses through the MRO option.<sup>30</sup>
  43. However, the Committee did not receive any conclusive evidence on this. The pub-owning companies suggested that there have been more freehold pub closures than tied pub closures in Scotland. Greene King told the Committee that it is a "common misconception" that "the legislation is going to address the issue of pub closures."<sup>31</sup>
  44. The SBPA noted that closures in the tenanted and leased sector "are less than half of that in independent free trade over the last 10 years." For the SBPA this illustrates that "the issues impacting pubs and leading to closures is not due to the tied-partnership, but wider factors resulting in the closure of premises across Scotland."<sup>32</sup>
  45. However, while it is true that more freehold premises have closed, this is likely because they comprise of a much larger part of the market. The rate of closures is higher in tied premises. The Committee could not find any published information on average length of tenure or business failure.
  46. The SLTA noted that "churn" was a better measure of business failure in the tied pub market than premises closing. This means that rates of business failure are considerably higher for tied pubs than they are for freehold pubs in Scotland.<sup>33</sup>
47. The Committee found the supporting data on pub closures, business failure and tenant tenure lacking. It is clear that pubs are closing, but the extent to which this can be attributed to problems with tied tenancy agreements was unclear. Further independent analysis of tenant tenure would be useful in assessing how widespread an issue it is and to what extent the failure of tied tenancies contributes to the overall rate of pub closure in Scotland.

## Scottish Pubs Code

48. The Bill requires that Scottish Ministers establish a Scottish Pubs Code. The Bill does not set out a draft code, but does include a number of requirements to guide Scottish Ministers in creating this code; namely that it must include the right for tenants to request a market rent only lease, and that it must include a right for tenants to stock one 'guest beer' which is not limited by the pub-owning company. The Pubs Code must be laid before the Scottish Parliament for approval within one year of Section 4 of the Bill coming into force. This code must be drafted to comply with three regulatory principles which are set out in section 3(3) of the Bill:
1. the principle of fair and lawful dealing by pub-owning businesses in relation to their tied-pub tenants
  2. the principle that tied-pub tenants should not be worse off than they would be if they were subject to neither a product tie nor a service tie
  3. the principle that any agreement between a pub-owning business and a tied-pub tenant should fairly share the risks and rewards amongst the parties.

## The Pubs Code in England and Wales

49. Supporters of the Bill felt that the implementation of the 2015 legislation meant that similar measures should also be introduced in Scotland in principle. It was highlighted that Scottish tenants deserved to have the same protection as those in England and Wales and witnesses suggested that tenants of the same pub company currently have fewer rights in Scotland as there is no statutory pubs code.
50. Many supporters of the Bill highlighted problems with the 2015 Act and emphasised the importance of learning from these mistakes to create more robust statutory regulation in Scotland. The SLTA suggested that any loopholes could be exploited, as was the case in England and Wales.<sup>34</sup>
51. The Policy Memorandum notes that the 2015 Act requires the UK Government to review the code, and the first review covers the period from the introduction of the code up to 31 March 2019. However, despite the consultation closing in July 2019, the review is yet to be published.<sup>35</sup>
52. Those who do not support the Bill argued that the landscape is significantly different, with around 750 tied pubs in Scotland and nearly 20,000 in England and Wales. It was argued that this makes the measures proposed in the Bill disproportionate in the Scottish context. Those opposed to the Bill suggested that there would still be significant difference in the rights of tenants north and south of the border. Star Pubs and Bars noted that because the 2015 Act only applies to tenants of pub-owning businesses with more than 500 tied pubs, 11,500 tied pubs are covered by the Code in England and Wales, but a further 3,500 are not. It noted that the number of pubs not covered by the Code "is more than four times the number of all tied pubs in Scotland."<sup>36</sup>
53. SIBA suggested that the success of the code relies on the detail, which will be determined through secondary legislation. It highlighted that in England and Wales,

ambiguity in the Code and guidance from the Pubs Adjudicator has created issues for tied pub tenants and pub-owning companies, which has resulted in arbitrations being slower than anticipated. It felt that the simplified process outlined in the Bill may help to address some of these issues.<sup>37</sup>

54. The Minister for Business, Fair Work and Skills suggested that it was important to better understand the consequences of a Bill that goes further than the legislation in England and Wales in a number of respects.<sup>38</sup>

55. The Committee notes that implementation of the Small Business, Enterprise and Employment Act has been considered problematic. The Policy Memorandum notes that the Bill has tried to avoid problems experienced in implementing the 2015 Act, but the outcome of the UK Government's review of the code has yet to be published, making it difficult to fully understand these issues or fulfil the Bill's aim of avoiding problems experienced in implementing the 2015 Act in England and Wales.

56. The Committee notes the different operating landscape in Scotland, which also makes direct comparison with England and Wales challenging.

## Threshold

57. The Bill proposes that the Scottish Pubs Code will apply to all pub-owning companies which operate tied pubs. This is different to the 2015 Act, where the Pubs Code in England and Wales only applies to pub-owning companies who have more than 500 tied pubs. There are around 750 tied pubs in Scotland and around 20,000 in England and Wales. As the tied pub sector in Scotland is far smaller, there are no pub-owning companies which have more than 500 pubs in Scotland. Based on SBPA figures, the Financial memorandum estimates that the pub-owning company with the largest number of tied pubs in Scotland is Star Pubs and Bars, with 250 tied pubs.

### Pub-owning businesses in Scotland

This table appears in the Financial Memorandum and is based on information provided by SBPA to the Non-Government Bills Unit

Pub-owning business	No. of pubs in Scotland	No. of tied pubs in Scotland
Punch Taverns	40	34
Belhaven/Greene King/ Spirit Leased	128	124
Hawthorn Leisure	92	71
Star Pubs & Bars/Heineken	255	250
G1 Group/Iona Pub Partnership	100	90
Trust Inns	47	45
Caledonian Heritable <sup>i</sup>	64	30
Rosemount <sup>ii</sup>	44	44
Kingdom Taverns <sup>iii</sup>	29	29
Admiral Taverns	15	15
Total	814	732

<sup>i</sup> Caledonian Heritable includes a number of businesses operating across industries. It does not consider itself a 'pub company'

58. The Committee heard mixed views on whether thresholds should be set in Scotland. Some felt that by including all pub-owning businesses, small business could be unfairly disadvantaged. The Federation of Small Businesses told the Committee that a threshold should be set to avoid hampering the growth of small microbreweries and pubs who expand to owning multiple properties. It suggested the Committee should recommend where this threshold should be set.<sup>39</sup>
59. SBPA was also concerned by the inclusion of small pub-owning companies in the proposed measures. It noted that this threshold was set in England and Wales to avoid placing a disproportionate burden on small businesses. The SBPA suggested that many of these type of pub-owning businesses (fewer than 20 outlets) will operate within a selected geographic area and provide investment in areas of the country which are sometimes overlooked by larger businesses. It believes that the Bill will disincentivise that.<sup>40</sup>
60. Admiral Taverns suggested that as the smallest pub-owning business to be covered by the Pubs Code Adjudicator in England and Wales, it faces a disproportionate cost burden. This was particularly felt as no referrals have been made by its tenants to the Adjudicator in England and Wales.<sup>41</sup>
61. Trust Inns suggested that the legislation should apply to businesses owning more than 100 pubs in Scotland.<sup>42</sup>
62. Tennent Caledonian Breweries support the Bill overall, but do not agree it should apply to all pub-owning companies which operate tied pubs. It said that the Scottish legislation should only apply to pub-owning companies with more than 500 outlets in the UK overall. It felt there should be consistency across the UK.<sup>43</sup> Tennent's believe that:
- ” A 500 threshold protects the concept of a GB wide single market and is an option that has already been tested in the rest of GB. If a lower threshold were applied you could end up with a situation where, in the same market, that size of pub group is penalised for being Scottish. A lower threshold would undermine the success of smaller local Scottish tied pub operators and put at risk their commitment to staff and communities and support of local Scottish brands and producers.<sup>44</sup>
63. In contrast, Star Pubs and Bars are entirely unsupportive of the Bill, but believe that if legislation was to be passed it should apply to all pub-owning businesses, regardless of size, to ensure fair competition and transparency in the market.<sup>45</sup> It said failing to do so "would create an un-level playing field for competition in the Scottish market and mean that larger pub-owning businesses were unfairly penalised for scale that actually provides benefits to tenants."<sup>46</sup>
64. The Committee heard from the SLTA that:

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ii Rosemount is not a current SBPA member - estimates in the Financial Memorandum were based on data available on the company website

iii Kingdom Taverns is not a current SBPA member - estimates in the Financial Memorandum were based on data available on the company website

” we do not think that there should be any threshold. If landlords are running their pubs properly, they should have nothing to fear from the pub code or the new bill. Everybody should have the opportunity to be treated fairly, and if they think that they are not being treated fairly, they should have recourse to somebody who can try to sort that out for them. <sup>47</sup>

65. Focus group participants suggested that the 500 pub threshold in England and Wales had caused confusion among tenants about whether or not the Pub Code applied to them. <sup>48</sup>

66. The Committee believes that should the Bill progress, the issue of threshold should be further considered at Stage 2.

## The Voluntary Code in Scotland

67. On 21 July 2016, in response to the Pubs Code coming into force in England and Wales, the SBPA published a voluntary code of practice for tied pubs in Scotland. The code replaced the British Beer and Pub Association's voluntary UK Industry Framework Code version 6, and previous individual company codes. This Code is supervised by the Pub Governing Body, which is made up of industry associations representing both tenants and landlords. 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 agreed to abide by the code, which means six of the ten businesses understood to be operating tied pubs in Scotland have signed up to the code. <sup>49</sup> Star Pubs and Bars noted that this covers 72% of tied pubs in Scotland. <sup>50</sup>

68. Changes were made to the Scottish voluntary code in 2019. The pub-owning companies suggested that, particularly given the impact of Covid-19 on the intervening year, it was too early to say how impactful these changes had been. Punch Pubs noted that these changes focus on:

1. Strengthening and promoting tenant rights through the creation of the voluntary Scottish Pubs Governing Body (under the auspices of the Pub Governing Body)
2. Supporting Scottish Communities by putting pubs at the heart of them
3. Offering tenants greater flexibility to sell local beers and ales
4. Funding the research and publication of an annual independent State of the Nation report on the Scottish pub sector <sup>51</sup>

69. The Committee was told by some witnesses that legislation was unnecessary in Scotland because there was already a voluntary code. Star Pubs and Bars believe that the voluntary code gives its tenants extensive rights, including access to Scottish arbitration panels and procedures where disputes arise, overseen by the

newly created Scottish Pubs Governing Body.<sup>52</sup> Those who oppose the Bill suggested that the voluntary code ensures that open market lettings are transparent about the opportunity being presented, including the impact of the tie, therefore allowing prospective tenants to shop around and assess all opportunities available to them across the pub market.<sup>53</sup>

70. Supporters of the Bill, including CAMRA, British Pub Confederation, the Pubs Advisory Service and SLTA were in agreement that voluntary codes had been ineffective in England and Wales and were also ineffective in Scotland. CAMRA argued that the voluntary code does not address the power imbalance between the tenant and the pub owner and does nothing to rebalance risk and reward. 74% of respondents to a 2014 CAMRA survey felt that they were worse off because of the tie. CAMRA suggested this was a clear indication that voluntary measures are not working.<sup>54</sup>
71. The pub-owning companies noted that only one rental dispute has been referred for independent assessment under the voluntary code since 2016. For them, this indicated a lack of supporting evidence to justify the introduction of statutory regulation.<sup>55</sup> The existing voluntary code offers low cost arbitration and rent review options which it noted have not been utilised. However, for CAMRA, this was evidence that the scheme has failed to make tenants aware of their rights, or indicates that tenants have no confidence in the voluntary code.<sup>56</sup> The SLTA said that the dearth of complaints by pub tenants indicates that tenants fear that they will be victimised if they raise issues.<sup>57</sup>
72. The SLTA told the Committee that changes made to the voluntary code in 2019 had been poorly advertised and few tenants were aware of these measures. The SLTA said that it only became aware of the Scottish Pubs Governing Body because it was on the panel and was therefore dubious that tenants had any knowledge of these changes.<sup>58</sup> The majority of participants in the Committee's focus group had not heard of the voluntary code and had not investigated the arbitration process. One tenant had heard of it, but was unaware that it was a Scottish code and unsure of what it entailed.<sup>59</sup>
73. Some witnesses suggested that the voluntary code was incomparable to a statutory code. For these supporters of the Bill the lack of MRO option in the voluntary code is a fundamental flaw.
74. The Scottish Licensed Trade Association highlighted case studies where tenant earnings were at best £25k per annum, and at worst £4k per annum. It quoted one tenant who said:

**”** We want out but cannot leave. The Voluntary Code is “toothless” and inferior to many of the codes that used to be in place with individual pubcos. Our pubco used to let you “escape” with a 6-months rent penalty. Now it is up to individual terms and conditions and we’ve been told we’d need to assign (sell) the lease on to someone else to escape it. We have personal guarantees in place and are trapped and heavily in debt to the Pubco.<sup>60</sup>
75. Neil Bibby MSP argued that voluntary measures were ineffective. He highlighted the 2011 Select Committee report, which said of statutory legislation:

” we see no alternative for an industry which has for too long failed to put its own house in order.<sup>61</sup>

76. Although the most recent iteration of the voluntary code is relatively new, Neil Bibby MSP suggested that:

” There has been ample time for the situation to be addressed through the voluntary code, but it is not going to be addressed through the voluntary code, because it does not deal with the fundamental issues that tenants are concerned about.<sup>62</sup>

77. The Committee found a lack of awareness of the voluntary code and suggest that more could be done to make tied pub tenants aware of existing measures, including mechanisms for arbitration. The Committee also notes that 6 out of 10 pub-owning businesses are currently signed up to the voluntary code and encourages the remaining 4 companies to also adhere to the code. The Committee recommends that the Scottish Government works with the pub industry and the Scottish Pubs Governing Body to better advertise the voluntary code in Scotland among tied-pub tenants if the Bill does not progress.

# Scottish Pubs Code Adjudicator

78. Under the Bill, Scottish Ministers must appoint someone to the office of Scottish Pubs Code Adjudicator within one year of Section 4 of the Bill coming in to force. The adjudicator may investigate a pub-owning business's compliance with the code should it have reasonable grounds to suspect that it has not complied.
79. Those who do not support legislation, suggested that the landscape in Scotland is different to that in England and Wales, meaning that a much smaller proportion of pubs are tied (around 17% in Scotland compared to around 39% in England and Wales).<sup>63</sup> Some respondents suggested that the relatively small anticipated caseload of the Scottish Pubs Code Adjudicator meant that legislation was not proportionate.
80. However, other evidence suggested that there was a high demand for the Adjudicator's services in England and Wales. The FSB noted that in its first year, the Adjudicator was overwhelmed by the 550 enquiries it received. 156 cases were also accepted for arbitration.<sup>64</sup>
81. Neil Bibby MSP suggested:
- ” I am not asking the committee to sit as judge and jury on all the issues and problems. However, given that there are deep-rooted, well-documented problems, we need to establish an independent adjudicator to look at the issues and resolve them. If we do not do that, we will be back here over and over again.<sup>65</sup>

## Appointment of the adjudicator

82. The Bill provides for Scottish Ministers to have some flexibility in terms of the nature and the structure of the Scottish pub code adjudicator's role and office. The policy memorandum notes that the role may not require a full-time appointment.<sup>66</sup> This flexibility should allow Scottish Ministers to staff the office appropriately for the workload once the details of the pubs code are finalised.
83. There are divergences from the UK legislation in terms of the appointment and running of the Adjudicator. Shorter review periods for the Code and Adjudicator are included (2 years rather than 3) and former tied tenants and pub-owning businesses are permitted to take retrospective action.
84. The Bill aims to make the process around the appointment of the adjudicator more robust in Scotland by requiring that the Scottish Government consider the impartiality of the office holder. The Bill also states that the Scottish Parliament must agree the appointment by resolution. Scottish Ministers will appoint the adjudicator but require the Scottish Parliament's approval.
85. The British Pub Confederation told the Committee that the Adjudicator should not have any past or current financial links to pub-owning companies and would preferably be from a legal background or similar statutory adjudicator role.<sup>67</sup> Several witnesses raised concerns about the Adjudicator's appointment in England

and Wales and stressed how important this appointment was in the entire credibility of the Bill and trust among tenants.

86. The Policy Memorandum indicates that based on England and Wales, it can be anticipated that 1.5% of tenants will make an enquiry, 1% will seek arbitration, and 3% may apply for an MRO. This would result in an estimated annual caseload of approximately 11 enquiries, 8 arbitration cases, and 23 MRO applications.<sup>68</sup>

87. The Committee notes evidence that should the Bill progress, appointment of an impartial adjudicator is essential to the successful implementation of the Bill.

## Court appeal process

88. The Bill proposes that the Adjudicator will be able to impose a financial penalty for non-compliance with the Code. Any penalty notice must set out the deadline, the amount of the fine, how it should be paid, the reasons for the penalty and the period over which it should be paid. The penalty must not exceed the permitted maximum, which will be defined through secondary regulations. These regulations must define the permitted maximums as well as the methodology for arriving at the level of penalty. The imposition and amount of the penalty may be appealed to the Sheriff Appeal Court.

89. The Scottish Courts and Tribunal Service noted problems with the appeal process. It highlighted that the Scottish Appeals Court only deals with appeals from the Sheriff Court currently, which would mean this would be a new process requiring investment by the Scottish Courts and Tribunal Service. This new process has not been costed in the Financial Memorandum. The Scottish Courts and Tribunal Service suggested that a more appropriate solution would be for appeals to be made to the Sheriff Court, where statutory appeals are generally made.<sup>69</sup>

90. Neil Bibby MSP noted that he is aware of this issue and is "happy to look at it at stage 2 and to liaise with the Scottish Courts and Tribunals Service if necessary."<sup>70</sup>

91. Should the Bill progress, the Committee recommends that the appeal process is revisited at Stage 2.

## Arbitration

92. The Bill in Scotland would give pub-owning businesses and tenants the right to refer any dispute about the Scottish pubs code to arbitration. The adjudicator must act as arbitrator (or appoint someone else to do so) in the event of a dispute, provided the dispute is:

1. between a pub-owning business and a tied pub tenant

2. concerning compliance with the Code (other than with excluded terms)
  3. is submitted to the adjudicator for arbitration under section 15 or in accordance with an agreement between the parties to the dispute
93. Again, the Committee heard mixed views about the need for this form of arbitration. The pub-owning companies highlighted that arbitration is already offered through the voluntary code in Scotland and several cited the low uptake of this service as evidence that issues were infrequent.
94. Punch Pubs argued that "occasional dispute can arise, however, the vested interest of both parties generally leads to fast and effective mutual resolution. For those that cannot achieve this there is adequate dispute resolution services in place if required." <sup>71</sup>
95. Several respondents to the Committee's survey suggested that the success of the tied model and the ability of both parties to resolve issues depended on which pub-owning business the tenant is tied to and how engaged the individual business development manager is (employed by the pub-owning business). <sup>72</sup> Focus group participants agreed that the individual relationship between the tenant and the business development manager was important and variable. <sup>73</sup>
96. Although focus group participants talked of their frustration about beer prices and rent prices, nobody that the Committee spoke to had investigated arbitration as a way to address their concerns. <sup>74</sup>
97. The Minister highlighted that the proposed arbitration could be applied retrospectively after the lease has ended, which may prove problematic. <sup>75</sup> The Scottish Government's memorandum also noted the industry-led measures which already exist. There is the low-cost arbitration process that pub-owning business offer their tenants in the form of the PIRRS (rent disputes) and PICA (other disputes) services. The Scottish Government understands that there have been no referrals to these services in Scotland although there are plans to make these more visible and accessible to Scottish tenants. <sup>76</sup>
98. Tenant's expressed concerns that implementation had been difficult in England and Wales:
- ” I am aware of cases in England that have taken an awfully long time, and the Pub owners will have superior finances to deal with lengthy arbitration processes. <sup>77</sup>
99. After concluding its evidence-taking on the Bill, Neil Bibby MSP wrote to the Committee to highlight that the Pubs Code Adjudicator had fined Star Pubs and Bars £2 million for breaches to the Pubs Code. <sup>78</sup> The Committee also received a response from Star Pubs and Bars to suggest that the fine relates to historic practices in leased and tenanted businesses in England and Wales. It suggests that it is actively considering an appeal. <sup>79</sup>

100. Several tenants raised issues regarding their contractual tied agreements through the Committee's survey, yet the Committee was surprised to learn that there have been no referrals to the PIRRS and PICA services for low-cost arbitration. The Committee believes that it is in both the tenant and the pub owners' best interests to minimise the turnover of tenants and encourage productive working relationships. The Committee therefore believes that the pub-owning companies must do more to make tenants aware of their options for dispute resolution.

## Market Rent Only (MRO)

101. An MRO lease is a lease where the rent is set at the market rate for the property. This means the rent is not reduced and offset by other restrictions that would limit how the tenant conducts their business in the pub – for example a tie restricting the type of beers stocked and the price they are purchased for. The Bill requires that pub-owning businesses must offer to enter into an MRO lease with any tenant who requests it. This is considered by supporters of the Bill to be a key element of the proposed legislation. Any modification to the existing terms must only be to the extent that it is necessary to convert the lease to MRO - although the Scottish Pubs Code can specify circumstances which are exempt from this. The pub-owning business must enter into the MRO lease as soon as possible following the tenant's request. This lease offer should not contain any unreasonable terms, and the code may specify which terms are to be considered unreasonable.
102. There are differences in the MRO option in the 2015 legislation and that which is proposed in the Bill. The Committee heard that there is opportunity to improve upon the legislation in England and Wales, where an MRO lease is only available to tenants in certain specified circumstances, and is not required to be delivered by varying an existing lease. In contrast, the Scottish Bill proposes that a tenant can request an MRO at any time, and that this MRO option must be a variation of the existing lease between the tenant and the pub-owning business. The Scottish pubs code must include a provision which requires pub-owning businesses to make every effort to enter into an MRO agreement as soon as possible following a request from a tenant.
103. The British Pub Confederation suggested that too many cases are being referred for arbitration in England and Wales following the 2015 legislative changes. It said, once the MRO option is triggered and an independent rent assessment is provided "the tenant must have the right to pay that rent, and only that rent with no other changes to the lease, as they are not necessary, within a set time. The original suggestion in England and Wales was 90 days."<sup>80</sup>
104. The G1 Group/ Iona Partnership felt that the range of trigger points operating in the 2015 Act allowed clarity on when the MRO option can be exercised. It said that this allows tenants to seek an MRO option if the economics of the pub operation change significantly or if the lease term renews. This gives both parties a level of certainty as to their position in the short term, allowing for appropriate budgeting, supply chain negotiation and allocation of resources. It said that it should be recognised that this short-term certainty is critical for pub-owning companies.<sup>81</sup>

## Views on the MRO option

105. The MRO option is the most contentious proposal in the Bill. The introduction of an MRO option fundamentally changes the nature of the tied relationship, where traditionally both dry rent and wet rent are central components.
106. Star Pubs and Bars told the Committee that MRO proposals are not practical. The Bill proposes that an MRO can be triggered at any time without any pre-requisite or qualifying circumstances. For Star Pubs and Bars, this means that the tenants could

terminate the commercial agreement at any time, removing any security the contract brings to the tied partnership.<sup>82</sup> In turn it would change Star Pubs and Bars "from a pub-owning business into a property company that will make decisions based on what makes commercial sense."<sup>83</sup>

107. The SBPA pointed towards the voluntary code and noted that if a tenant is unsatisfied with the dry rent cost, they have the option to have a low-cost independent assessment that pub companies agree to be bound by. It said that if a tenant wants to take on a free-of-tie pub, they also have greater opportunity in Scotland where the independent sector accounts for two-thirds of pubs.<sup>84</sup> It was argued that people already have choice if they do not think that a tied relationship is the best option for them.<sup>85</sup> The Committee was told that pubs are let on a transparent basis and "everyone understands what they are entering into".<sup>86</sup>
108. In contrast, SLTA thought that the MRO option was crucial and noted:
- ” A "Market Rent Only" option which releases the tie provides an incentive for pub-owning companies to compete with the wider market both on "price of supplied goods" and "price of capital" for investments, resulting in a healthier, more sustainable, more competitive and more dynamic sector.<sup>87</sup>
109. SIBA suggested that the creation of the MRO option in England and Wales has given tied tenants a better understanding of the options open to them and the risks and rewards of these different models.<sup>88</sup>
110. Tenants also felt that the MRO option would give them greater leverage to negotiate a fairer deal with the pub owner. Several tenants shared their concerns about high rent prices, which they did not feel reflected market prices. The Committee was given examples where tenants found that neighbouring properties had significantly lower rent.<sup>89</sup> Tenants who responded to the Committee's survey suggested that the ability to request an MRO lease was welcome, but noted concern that there were relatively few MRO leases as an outcome of the introduction of legislation in England and Wales.
111. There was a perception among tenants that the Adjudicator was biased towards the pub-owning business, which had hampered the success of the 2015 Act. Tenants were concerned that pub-owning businesses could seek to recoup any lost income by setting the market rate of rent artificially high. It was suggested that tenants who had tried to evoke MRO had been heavily penalised in England and Wales.<sup>iv</sup>
112. Witnesses also raised concerns about the impartiality of the surveyors who assess rental value. There was a perception among tenants that it was in the surveyor's interest to provide a market rate rent assessment which was favourable to the pub owner, as this was more likely to secure future business.<sup>90</sup>
113. Despite these concerns, 94% of respondents to the Committee's survey thought the ability to request an MRO lease would improve the position of tenants.<sup>91</sup>

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<sup>iv</sup> Following the Committee's evidence-taking the Adjudicator completed a 15-month investigation into Star Pubs and Bars. Further information is contained in paragraph 99.

114. The Scottish Government's memorandum on the Bill notes that based on demand in England and Wales, it is expected that there would be around 23 MRO requests activated for consideration in Scotland each year, with approximately 6 tenants moving to an MRO agreement and 17 entering into a new tied agreement, likely on negotiated terms. The Scottish Government indicated that it supports the aspirations of the Bill but is unsure whether legislation is proportionate.<sup>92</sup>
115. Neil Bibby MSP emphasised that the renegotiation of deals would be a positive outcome of the Bill. It is not necessarily about tenant's taking the MRO option, but giving them the leverage to demand a fairer deal.<sup>93</sup> Other supporters of the Bill suggested that pub-owning businesses will offer tenants more attractive contracts to ensure that they do not seek MRO.<sup>94</sup>

116. The Committee notes that the Market Rent Only option is the most contentious aspect of the Bill in the eyes of witnesses who opposed it. On the other side of the argument, an overwhelming majority of respondents to the Committee's survey supported this proposal and considered it important in improving the situation for tenants.

## Guest beer agreement

117. Alongside rent of the pub, the purchase of beer from the pub owner is also a key component of most tied contracts. The price paid for tied products and the range of products available to the tenant were also contentious issues. Many tenants suggested that the benefits gained through the tied models did not justify increased cost of beer and other tied products.
118. The Bill states that the code must require a pub-owning business to offer to enter into a guest beer agreement with a tied pub tenant in certain circumstances (specified in the code). This agreement would allow the tenant to sell to their customers at least one beer chosen by the tenant, at a price of their choosing. This beer can be changed as frequently as the tenant wishes. A guest beer right was not included in the legislation for England and Wales.
119. Some of the pub-owning businesses noted that many tied tenants are not tied on all products. Several pub-owning companies thought that the guest beer agreement was unnecessary as they already worked closely with their tenants to ensure that a suitable range of products is on offer. Admiral Taverns told the Committee that it allows its tenants to select products from the SIBA Beerflex system and have allowed licensees to be free of tie for certain local brewers where the licensee has explained the potential benefit to their business. It noted that Nauticus in Leith has prioritised stocking Scottish products and is now one of its award-winning pubs. In the six years since Admiral has owned pubs in Scotland, it told the Committee that no licensee has been refused a request to stock a local brand.<sup>95</sup>
120. Pub-owning companies also told the Committee that many tenants have the opportunity to stock locally produced cask and craft ales through the SIBA scheme and are also free of tie on wines, spirits and soft drinks.<sup>96</sup> The SBPA suggested that 40% of tied pubs are free of tie for wine, spirits and tonic water, which suggests the majority are not.<sup>97</sup> The SIBA Beerflex scheme allows tied pub tenants to purchase a guest beer through their pub-owning company from local breweries. This provides a mechanism for small breweries to access tied pubs and for tenants to serve non-tied local beer.<sup>98</sup>
121. SIBA indicated that around 1,000 barrels of beer a year are sold through Beerflex in Scotland, which is a small amount.<sup>99</sup> There are 20 SIBA breweries in Scotland who use Beerflex, and 6 pub-owning companies who buy through it.
122. Some witnesses argued that there is less consumer choice in tied pubs. Tenants suggested that in a competitive industry, stocking new and local products can give the pub added appeal to customers and increase business. Focus group participants suggested that they had been discouraged from stocking non-tied beer by price increases. One tenant said they can buy a keg from Norfolk for £77, but a local Scottish product would be £135 per keg. Whilst the tenant did not say whether the two products would have been of comparable cost on the free market, it was suggested that the tenant was being discouraged from supporting other local businesses.<sup>100</sup>

123. The Committee heard that both tied pub tenants and consumer are keen to support independent local businesses by buying more local products, which would in turn boost regional economies. Tennent Caledonian Breweries said that "Scottish consumers prefer Scottish brands". It highlighted that, "in the Scottish free trade, English beers comprise less than 8% of all beer consumed," but in the Scottish tied sector, English beers comprise 16% of beer consumed."<sup>101</sup>
124. SIBA noted that consumers are seeking greater variety and choice in their beer and the Scottish Co-operative Party noted that polling suggests 68% of pub-goers are less likely to go back to a pub if it does not have a range of local and independent beers and ciders.<sup>102</sup>
125. However, the Committee heard that the guest beer agreement may not be used to support small local producers in practice. It was not included in the 2015 Act as there were concerns that this would be used to purchase an alternative high-volume lager rather than local beers. The Committee heard similar concerns during its consideration of the Bill. Punch Pubs noted that the guest beer provision "would open the door to larger brewers and significantly undermine schemes such as SIBA Beerflex. The result of this will reduce the opportunity for smaller brewers' routes to market rather than expand them."<sup>103</sup>
126. Admiral Tavern supports tenants to stock local beer brands and supports the intent behind the guest beer provision. However, it does not believe that it will work in practice and noted:
- ” a certainty that most licensees will look to maximise profit by choosing the largest volume product to be their free of tie product. This would therefore result in the multinational brewers, with the largest financial resources, securing this free of tie line. This could actually restrict the range of products available to the consumer and reduce the ability for local brewers to access the market.<sup>104</sup>
127. SIBA suggested that the wording of the guest beer agreement is important:
- ” If it just leads to another macro lager being offered on the bar, which is being brought in at a cheaper price, that will simply devalue the tied tenancy and therefore alter the economics, but it will not enhance the offering. It would be important to word the provision in such a way as to avoid serious unintended consequences that could be very damaging.<sup>105</sup>
128. Neil Bibby MSP told the Committee that the detail of the guest beer agreement is still to be determined through the drafting of the statutory code, but the principle of flexibility for the publican and choice for the consumer is key, whether that be stocking a mass-produced lager or a local craft beer.<sup>106</sup>
129. There is consumer demand for craft beer and the Committee is supportive of measures which would help small independent brewers access a greater number of pubs and in turn support local production, jobs and economies. However, it is unclear to the Committee whether this would prevail from the guest beer agreement provisions as drafted.<sup>v</sup>

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v There was a division on adding a new recommendation paragraph after paragraph 129; the prevailing view was to omit the new paragraph; the minority view having proposed: "Throughout the Bill there are differences of opinions between tenants and pub-owning businesses, but the Committee notes that the Bill is supported by consumer representatives and the Society of Independent Brewers, who represent local brewers and operate the Beerflex scheme." See Annexe A, Minute of the Meeting of 3 November 2020, and note on 'Record of division in private' for more detail.

## Investment by pub-owning companies

130. It was argued that the introduction of the Bill in general and the MRO option in particular would have a significant impact on investment in the pub sector.
131. The SBPA noted that the Bill creates uncertainty for the pub-owning businesses and investment has been postponed as a result. It noted that around £15 million is invested annually in Scottish pubs by its members and highlighted that £10 million of investment was suspended due to the introduction of this Bill. However, it also noted that this investment was based on plans prior to the COVID-19 pandemic, which are likely to already be impacted.<sup>107</sup> Several of the pub-owning businesses indicated that their investment in Scotland was under review in light of the legislation. Punch Pubs said that it had plans to invest £80 million developing its tied pubs across a three-year period. It has reconsidered this investment in the Scottish estate due to the legislation.<sup>108</sup>
132. The G1 Group/ Iona Pub Partnership agreed that its investment would be impacted. It said that historically it has been regarded by insolvency practitioners, banks and brewers as one of the few obvious potential purchasers of distressed hospitality assets. The pub-owning business prides itself in successfully rescuing businesses and jobs, by purchasing distressed hospitality operations. It told the Committee that the implementation of a Pubs Code on tied pubs is likely to mean that the rescue of distressed pubs is less viable in the future, meaning it may deploy its capital elsewhere.<sup>109</sup>
133. The pub-owning businesses highlighted the economic contribution they make in Scotland through their pubs as well as supply chain support and jobs. Star Pubs and Bars told the Committee that it invested £5 million in Scotland in 2019, which created 92 jobs.<sup>110</sup>
134. Several of the pub-owning businesses suggested that they would either sell pubs as a consequence of the Bill or change the operating model to manage the pub themselves. Punch Pubs said that within its estate in England and Wales, there has been a shift from 2.4% of the estate being managed prior to 2015 Act to 19.5% in 2020.<sup>111</sup>
135. However, the Pubs Advisory Service questioned how significant the shift from a tied model to a management model would really be. It said that "it would cost pub companies huge amounts of money to take back pubs. The companies would have to pay compensation and refurbish the pubs, and they would lose wet rent and rent from the tenant."<sup>112</sup>
136. It was noted that despite the concerns raised by the pub-owning companies, there have been high profile acquisitions and investment in tied pubs in England and Wales since legislation was introduced. Star Pubs and Bar said that in 2019 alone, it made its largest ever annual investment of £50 million in its pubs.<sup>113</sup> However, Hawthorn Leisure did suggest that there are fewer leased and tenanted pubs in England and Wales following the introduction of the Statutory Pubs Code in 2015.<sup>114</sup>

137. Neil Bibby MSP believes that far from damaging investment, the Bill could have a positive effect on the Scottish economy. He noted Tennent Caledonian's assertion that £31 million of profit is being extracted from pubs and brewers. Neil Bibby MSP suggests that if local businesses are given greater flexibility to invest, money is far more likely to be retained in the local economy.<sup>115</sup>

138. The Committee felt that the arguments and investment figures presented on both sides were selective. The Committee believes that businesses desire profit and while profit can be made through tied tenancies, they will continue.

## Covid-19 investment

139. Inevitably, given the timing of the Bill, both pub owners and tenants highlighted investment during the Covid-19 pandemic and the unprecedented restrictions on pubs at this time in their responses to the Committee's scrutiny. While not directly related to the Bill, several responses noted that anything that increased costs to the industry would not be welcome during the recovery from the Covid-19 pandemic, which is already a significant threat to investment and jobs.

140. The Scottish Government noted that the impact of Covid-19 on the pub sector has been significant and this legislation ought to also be considered within that context, particularly in light of the ongoing dispute in relation to payment of rent and the wider recovery of the industry. As such, the Scottish Government suggested that the Committee may wish to explore whether the legislation would further aid or hinder those relationships, particularly in times of crisis.<sup>116</sup>

141. The Committee received submissions from some tied tenants expressing concerns that the Bill poses a threat to their business. Several tenants said that their business development managers had offered help and advice during the pandemic, which has helped them "to navigate an incredibly difficult situation", and ensured the "business has been able to survive lockdown."<sup>117</sup> These tenants cited the support received as very fair and valuable to their business. Hawthorn Leisure suggested that:

” The Covid-19 lockdown has proven more than ever that the Free of Tie model is a very lonely and isolated place to be for a pub tenant with no access to financial support and a high fixed cost rent to be paid.<sup>118</sup>

142. Several of the pub-owning businesses gave details on their respective policies on cancelling, deferring and capping rent during the lockdown period. The pub-owning companies also highlighted the support given to tied pub tenants with the disposal and replacement of beer through the Covid-19 period, as well as advice on how to safely reopen.<sup>119</sup> It was suggested that this support would not have been available to tenants who are free of tie. Admiral Taverns posed the question, "where the free of tie landlord is not sharing in the upside when times are good, why should the same landlord be required to provide support when times are not so positive?"<sup>120</sup> Star Pubs and Bars told the Committee that:

” Covid-19 and a severe economic downturn means investment is required more than ever; this Bill was badly conceived before the pandemic and is entirely ill-judged now. <sup>121</sup>

143. However, views among tenants varied. Some suggested that they had received unprecedented support during lockdown from their business development managers and pub-owning companies, while others indicated rent had been deferred or capped during lockdown, but delayed payment was still expected for this period. One tenant told the Committee that paying this rent had pushed him into debt for the first time. Experiences varied depending on the pub-owning business. Other tenants said that the pub-owning companies had cancelled rent entirely during this period. <sup>122</sup>
144. Neil Bibby MSP suggested that level of support received by tenants during the coronavirus crisis varied depended on the pub-owning company. He argued that "campaigners had to introduce a wall of shame in order to shame some of the pub-owning companies into giving rent cancellations of deferrals." <sup>123</sup> The member suggested that the statutory code and statutory regulation would bring greater consistency to these relationships.

145. The Committee notes that Covid-19 has put enormous pressure on the pub industry; opening hours and pub capacity have been heavily curtailed, and periods of closure have led to months without sales or customers. Regardless of operating model, the Committee welcomes the measures that pub owners, tenants, managers and staff have taken to adhere to guidelines and make pubs as safe as possible.

## Up-front investment

146. The pub-owning companies highlighted that becoming a tied pub tenant offers entry-level opportunities for people who would like to run their own pub, but lack the knowledge, experience or capital to start out on their own.
147. Several of the pub-owning companies highlighted that the Bill could have the unintended consequence of limiting the low-cost entry into the pub market for entrepreneurs or businesses, which would be of detriment. <sup>124</sup> The SBPA suggested that on average, it is ten times cheaper to start a tied-pub than buy one in the Independent Free Trade (£30k v £300k). <sup>125</sup>
148. One respondent to the Committee's survey noted that the tied model had worked well for them:
- ” This model allows me to run my own pub pretty much my way with minimal initial financial outlay while having the financial and experienced back up on the pub company. <sup>126</sup>

149. However, Neil Bibby MSP said that evidence raised to the House of Common's Business, Energy and Industrial Strategy Committee by pub-owning companies suggested that in England and Wales, "awareness of the statutory code is up, tenure has increased, the number of young applicants taking on a tenancy has increased and pubcos now provide better support for licensees and better recruitment processes." <sup>127</sup>
150. The British Pub Confederation said that in England and Wales pubs which were previously owned by large pub-owning companies are being bought freehold or by small entrepreneurial pub companies. It said many new breweries are buying pubs and making significant investment. It was felt that this was also a positive opportunity for entrepreneurs in Scotland. <sup>128</sup>
151. The British Pub Confederation told the Committee that it is a "complete myth" that low-cost entry is only possible through a tie. "Tenancies are a low-cost entry to the market, regardless of whether they are tied or free of tie...the difference is between paying only a dry rent to the pub-owning company and paying a dry rent and a wet rent." <sup>129</sup>

## Investment in repairs and maintenance

152. Pub-owning businesses highlighted that tenants are supported to access repairs, maintenance, building compliance and redevelopment of the business through refurbishment projects. <sup>130</sup> The pub-owning businesses told the Committee that supporters of the Bill will say that the price of beer and rent is unfair, but fail to note the benefits offered to tied pub tenants, such as pub refurbishment, access to loans and other non-financial benefits.
153. Respondents to the Committee's survey suggested that investment in tied pubs was one of the main areas of friction between pub-owning businesses and tied tenants. The majority of respondents (62%) claimed that they had received no investment in the pub they rented – either nothing had been offered or the terms were not acceptable. Of those who had received investment in their pub, the most common method of repayment was through rent increases. A number of tenants expressed concerns that the rent increase over time would considerably eclipse the level of investment provided – respondents noted their own experience where the proposed costs of the work at the pub were materially higher than independent quotes requested by the tenant. Some respondents also suggested they were having to repay for investment which should have been the responsibility of the pub-owning business as the landlord of the pub. <sup>131</sup>
154. Several submissions suggested that the investment from pub-owning companies was quite limited and offered on very expensive terms. Other lenders were reluctant to offer finance to tied tenants, which limited options and meant that for many tenants the expensive investment from the pub-owning company was the only option. The SLTA indicated that loans from pub-owning companies are often paid by tenants for the duration of the lease rather than the ending when the investment has been repaid. <sup>132</sup> The Pubs Advisory Service told the Committee that "a tied tenant

is looking at rates of interest that are seven times higher than what they could get in the free market." <sup>133</sup>

155. Those supportive of the Bill highlighted the poor returns some tied tenants made from their pub, suggesting that this limited the tenant's ability to invest in the business. One tenant told the Committee that their lack of gross profit meant they were reliant on the pub-owning business to make improvements. This is then paid back through increased rent. <sup>134</sup>
156. Tennent Caledonian Breweries noted that a free trade model does not inhibit investment as it has invested over £75 million in its free trade customers in the form of loans since 2009. It believes this to be a higher level of investment than that made by pub-owning companies in Scotland. <sup>135</sup>
157. The pub-owning companies cited examples where extensive improvements had been made to its pubs. The G1 Group/ Iona Pub partnership said:

” We lease a large number of community pubs in more challenging trading areas that have benefited from or may in time benefit from investment, not only to upgrade the décor but to change the trading format to introduce food and create more family friendly environments. With these types of investment comes other benefits, such as increased skilled employment and creating safe places for people in these areas to socialise and feel part of the local community. <sup>136</sup>
158. The pub-owning companies suggested that this level of investment would no longer be possible as there was no guarantee in return on investment with the MRO option in place. The SBPA suggested that pub-owning businesses invest heavily in repairs and improvements. It told the Committee that in the last two years, more than one in six tied pubs received significant capital investment each year, averaging at over £70,000 per pub, and in individual cases investments of up to and beyond £500,000. In addition, companies spend on average between £2000 and £4000 on general repairs and maintenance in over 80% of their pubs. This investment would only be available via commercial banks and through brewery loans if the pub is not in a tied-partnership. Whilst these are viable routes for some, access to commercial finance and the cost will often be prohibitive for many small pub businesses. <sup>137</sup>

## Other forms of investment

159. The pub-owning businesses were keen to emphasise that the benefits to the tenant go beyond financial investment and includes a range of benefits and support, which would not be available to freehold pubs. These 'special commercial or financial advantages', known as SCORFA benefits included things like marketing support, promotional activity, training courses, free commercial TV packages, business development advice and emotional support.
160. The Scottish Government's commissioned research from 2016 found that fully or partially tied tenants had a poor understanding of SCORFA benefits. <sup>138</sup> The pub-owning businesses agreed. They said that there was a tendency for tenants to

focus on the price paid for beer rather than look at the package of benefits offered through the tied model.

161. Supporters of the Bill suggested that many tenants do appreciate the value of these benefits and therefore do not come forward with complaints because they "fear having benefits taken away from them." The Pubs Advisory suggested that these SCORFA benefits are not included in the lease and could therefore be withdrawn by the pub-owning business at any time. <sup>139</sup>

162. The Committee notes that the Bill does not directly discuss investment, but the majority of witnesses suggested that investment by both pub owners and tenants would be impacted in some way. The Committee notes evidence that suggests continued investment in tied pubs in England and Wales despite the 2015 Act and wonders whether the gloomier predictions may have been overstated despite the likelihood of change, should the Bill progress.

163. The Committee also notes that investment in repairs and maintenance of the pub was one of the main areas of friction between pub-owning businesses and tied tenants. On the one hand, the Committee heard that pub owners would be less likely to invest in tied pubs and their improvement if an MRO option was available to tenants, bringing uncertainty to the length of tenure in contracts. On the other, the Bill's supporters said that there would be greater opportunities for tenants to invest themselves or to negotiate improved terms for investment by the pub owners. Again, the polarised nature of the debate, and lack of recent and reliable data, has made the Committee's consideration of the issues raised by the Bill difficult.

# Financial memorandum

164. The Financial Memorandum sets out the expected costs if this Bill passes into law. The funding model in the bill would mean that pub-owning companies bear the majority of the ongoing costs of the Scottish pub code adjudicator's office. These costs will be met by an annual levy on those businesses covered by the code, and follows the model used in the 2015 Act. This levy would be raised at the start of the financial year based on estimated expenses - with any surplus to be repaid to pub-owning businesses in the next financial year.
165. Expenses will be generated prior to the first levy being raised. Initial costs are expected to be funded by a loan from the Scottish Government, which could be repaid from either the first levy, or spread over subsequent levies.
166. The implementation and operation of the Pub Code Adjudicator in England and Wales is used as a reference for the likely costs resulting from the Bill. The PCA in England and Wales covers around 9,600 tied pubs, while the Scottish Beer and Pub Association estimates there are 732 tied pubs in Scotland. The Bill uses an estimate of 750 tied pubs to model expenses, which is 7.8% of the number of tied pubs covered by the PCA in England and Wales.
167. Most of the costs of the Bill will fall on pub-owning businesses. The Financial Memorandum estimates that the costs on each pub-owning business in scope of the levy will be between £6,000 and £86,700.<sup>140</sup>
168. The Financial Memorandum sets expected costs on the Scottish Government of £210,000 or £275,000 in the first year of operation (not including the salary of the SPCA), depending on whether the SPCA uses existing Scottish Government office space or not. These costs are expected to be reimbursed through receipts from the levy on pub-owning businesses.
169. The Financial Memorandum estimates the number of cases that will be brought to the Scottish Pubs Code Adjudicator (SPCA) with reference to number of enquiries raised and arbitration cases that the PCA heard in England and Wales during the first four years of its operation.
170. Star Pubs and Bars anticipate that the operating costs for the SPCA will be much higher than forecast. It noted:
- ” the Bill introduces fundamentally the same system as in E&W and therefore requires much the same infrastructure, at the same costs. The PCA in E&W accounts show operating costs as £407,000 in 2016/17. As evidenced in England and Wales, these operating costs are set to spiral and increase. For Star Pubs & Bars alone fees to fund the PCA have gone up each year: £427,000 in 2017/18; £671,063 in 2018/19 and fees have remained high at £647,340 in 2019/20.<sup>141</sup>
171. Admiral Taverns highlighted that the cost of running the Pubs Code Adjudicator's office was drastically under-estimated in England and Wales. It told the Committee that it costs:

” over £300 annually per leased and tenanted pub to fund the Pubs Code Adjudicator's office, and over three times the figure that was included in the original cost estimate (£90 per pub) when the Pubs Code was first proposed. The increase in cost per pub is partly due to increased costs and partly due to one of the unforeseen consequences, namely reduced pub numbers as sites have been converted to managed operations. The cost estimate for the Adjudicator under the Bill is £260,000 (or £347 / pub). If costs run at three times the original estimate (as for the Pubs Code Adjudicator), the costs will be c£1,000 per pub per year. Introducing this new financial burden would be onerous and unforgivable at this moment of crisis. <sup>142</sup>

172. Neil Bibby MSP noted the concerns of the pub-owning businesses that costs may have been underestimated, but also suggested:

” I hear what the pubcos say about the costs being radically underestimated but, on the other hand, they also say that there are too few tied pubs in Scotland and that there would be too few complaints. They cannot have it both ways; they cannot simultaneously say that the costs are underestimated and that the number of tied pubs is too small to justify the bill. <sup>143</sup>

173. The Committee notes that there are differing views on the likely workload for the Pubs Code Adjudicator, and therefore also the overall set-up and running costs outlined in the Financial Memorandum.

# Conclusions

174. The Committee believes that pubs perform an important role in Scotland's communities and make significant contributions to the Scottish economy. It is important that customers have choice in the establishments they visit and the products they buy. Pub owners and those managing and operating pubs should feel that tied-pub arrangements are mutually beneficial.

175. The Committee believes that both the pub-owner and tenant should get a fair return and some of the income levels cited by tenants seemed very low. However, in the absence of independent analysis, members felt that small sample sizes and dated information made much of the evidence limited. It was difficult for the Committee to assess the range of income being received by different tenants and how this related to the pubs overall profits. The Committee would have found it helpful to have more information on this point.

176. A majority of the Committee remained frustrated by the polarised arguments and the lack of complete, robust and independent data upon which to evaluate the potential impact of the proposed Bill on pub owners and tenants. That majority were unconvinced that sufficient evidence was presented to the Committee to suggest that the problems described were large-scale or that there were adequate grounds to warrant legislative interference in contractual agreements.

177. However, a minority of the Committee agrees that there is an imbalance in the relationship between pub tenants and landlords and that the provisions in the Bill would help to ensure a fairer balance of risk and reward. They note that the Bill is supported by the majority of those who responded to the Committee's call for evidence, in particular a broad coalition of workers, tenants, and consumers. The establishment of a statutory code, an independent adjudicator and a market only rent option are welcome and overdue measures.

178. The Committee, whilst commending the intent behind the Bill, is not agreed that legislation is required, and does not support the general principles of the Bill.<sup>vi</sup>

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<sup>vi</sup> The Committee agreed the final recommendation by majority decision. For 6 (Colin Beattie, Willie Coffey, Maurice Golden, Alison Harris, Richard Lyle, John Mason), Against 2 (Rhoda Grant, Andy Wightman), Abstentions 1 (Gordon Lindhurst).

# Annexes

## Annex A - Minutes of Meetings

### 24th Meeting, Tuesday 18 August 2020

**2. Tied Pubs (Scotland) Bill:** The Committee took evidence on the Bill at Stage 1 from—

- Tom Stainer, Chief Executive, CAMRA;
- Keir Greenaway, Organiser, GMB Scotland;
- Jamie Delap, Scotland Regional Director, Society of Independent Brewers;
- Paul Waterson, Scottish Licensed Trade Association;
- Greg Mulholland, Campaign Director of the Campaign for Pubs, Chair,
- British Pub Confederation;
- Chris Wright, Head, Pubs Advisory Service;
- Lawson Mountstevens, Managing Director, Star Pubs & Bars;
- Emma McClarkin, CEO, British Beer & Pub Association;
- Edith Monfries, Chief Operating Officer, Hawthorn Leisure.

**3. Tied Pubs (Scotland) Bill (in private):** The Committee considered the evidence heard at today's meeting.

### 25th Meeting, Tuesday 25 August 2020

**5. Tied Pubs (Scotland) Bill:** The Committee took evidence on the Bill at Stage 1 from—

- Jamie Hepburn, Minister for Business, Fair Work and Skills, Aileen Bearhop, Head of Industry Development / Food and Drink Industry Growth Team, and Dr George Burgess, Deputy Director, Food & Drink, Scottish Government.

**8. Tied Pubs (Scotland) Bill (in private):** The Committee considered the evidence heard at today's meeting.

### 26th Meeting, Tuesday 01 September 2020

**3. Tied Pubs (Scotland) Bill:** The Committee took evidence on the Bill at Stage 1 from—

- Neil Bibby MSP, Member in charge of the Bill;
- Nick Hawthorne, Senior Assistant Clerk, Scottish Parliament.

Neil Bibby referred the Committee to his Register of Interests and the in-kind support received from the Scottish Licensed Trade Association, the Campaign for Real Ale, GMB Scotland and Tennant Caledonian Wholesalers.

**5. Tied Pubs (Scotland) Bill (in private):** The Committee considered the evidence heard at today's meeting.

### **30th Meeting, Tuesday 29 September 2020**

**Tied Pubs (Scotland) Bill (in private):** The Committee considered the evidence received and issues for its draft Stage 1 report.

### **32nd Meeting, Tuesday 27 October 2020**

**Tied Pubs (Scotland) Bill (in private):** The Committee considered a draft Stage 1 report, various changes were agreed to, and the Committee agreed to consider a revised draft in private at a future meeting.

### **33rd Meeting, Tuesday 3 November 2020**

**Tied Pubs (Scotland) Bill (in private):** The Committee considered a revised draft Stage 1 report, various changes and arrangements for its publication were agreed to, and the Committee agreed to approve the report by correspondence.

### **Record of divisions in private**

Rhoda Grant proposed a recommendation following paragraph 129—

"Throughout the Bill there are differences of opinions between tenants and pub-owning businesses, but the Committee notes that the Bill is supported by consumer representatives and the Society of Independent Brewers, who represent local brewers and operate the Beerflex scheme."

The proposal was disagreed to by division: For 2 (Rhoda Grant, Andy Wightman), Against 6 (Colin Beattie, Willie Coffey, Maurice Golden, Alison Harris, Richard Lyle, John Mason ), Abstentions 1 (Gordon Lindhurst).

The Committee agreed the final recommendation by majority decision. For 6 (Colin Beattie, Willie Coffey, Maurice Golden, Alison Harris, Richard Lyle, John Mason), Against 2 (Rhoda Grant, Andy Wightman), Abstentions 1 (Gordon Lindhurst).

## **Annex B - Written Evidence and Correspondence**

The Committee's Call for Views was opened on Friday 21 February. It was paused on Monday 30 March and reopened on 19 May and closed on 14 July 2020.

- [Anonymous](#)
- [SIBA, the Society of Independent Brewers](#)
- [Iain Taylor](#)
- [Ferry Cyrus](#)
- [Joe Ghaly](#)
- [Scottish Courts and Tribunals Service](#)

- [Gilmours Bar](#)
- [The Wheatsheaf](#)
- [Cleddans Bar](#)
- [The Railway Inn](#)
- [Scottish Licensed Trade Association](#)
- [Hawthorn Leisure Ltd](#)
- [Tennent Caledonian Breweries](#)
- [Star Pubs & Bars Ltd](#)
- [Federation of Small Businesses](#)
- [Campaign for Pubs](#)
- [Trust Inns Limited](#)
- [Punch Pubs & Co](#)
- [British Pub Confederation](#)
- [CAMRA, the Campaign for Real Ale](#)
- [Scottish Co-operative Party](#)
- [Forum of British Pubs](#)
- [Admiral Taverns](#)
- [Scottish Beer & Pub Association](#)
- [Livingston Inn Ltd](#)
- [Queen Street Tavern](#)
- [The Bayview Bar](#)
- [Burts Bar](#)
- [Commercial Inn](#)
- [Victoria Bar](#)
- [G1 Group plc and Iona Pub Partnership](#)
- [The Braes](#)
- [Greene King](#)
- [GMB Scotland](#)
- [Group submission from pub directors \(Belhaven/ Greene King\)](#)

## Supplementary Evidence

- [SIBA, the Society of Independent Brewers](#)
- [Scottish Beer and Pub Association - Code of Practice](#)
- [Example of a Deed of Variation](#)
- [Scottish Licensed Trade Association](#)
- [Scottish Licensed Trade Association - Liquor licensing statistics \(Scotland\): 2018-19](#)
- [Scottish Beer & Pub Association, Hawthorn Leisure and Star Pubs & Bars](#)

The following submission was sent by 3 people via a Scottish Co-operative Party Campaign. The individuals are listed at the bottom of the submission:

- [Scottish Co-operative Party Campaign](#)

The following submission was sent by 220 people. Those respondents who were happy for their names to be included in support are included at the bottom of the submission:

- [CAMRA Campaign](#)

An additional 21 people used the above submission as the basis for their comments, but have amended the text or added additional information:

- [Myke Grantham](#)
- [Scott Telford](#)
- [Martin Hobson](#)
- [Matthew Mellor](#)
- [Ian Relf](#)
- [Ian Middleditch](#)
- [Duncan Mackay](#)
- [Robert Biggar](#)
- [Mark Nesbitt](#)
- [Gill Chadwick](#)
- [Robin Livingstone](#)
- [Robbie Pickering](#)
- [Roderick Speirs](#)
- [Rog Harrison](#)
- [John Miller](#)

- [Andy McFall](#)
- [Grahame Cumming](#)
- [Stuart McMahon](#)
- [Roger Wright](#)
- [Greg Haywood](#)
- [Bob Doig](#)

The Committee also ran an anonymous survey where pub tenants were asked to share their views. SPICe produced a summary of the responses received:

- [SPICe summary of survey responses from pub tenants](#)

### **Focus group**

On 10 August, the Committee held an online focus group with pub tenants to explore their views on the Bill. The following anonymous note was produced to summarise the discussion:

- [Note of focus group with tenants](#)

### **Correspondence**

On 4 May Neil Bibby MSP, the Member in charge of the Bill wrote to the Committee regarding consideration of the Bill. The Committee replied on 19 May.

- [Neil Bibby's letter to the Committee](#)
- [Committee's response](#)

The Scottish Government provided a memorandum to assist consideration of the Bill.

- [Scottish Government Memorandum](#)

On 11 September, Neil Bibby MSP wrote to the Committee with several points which arose during the session.

- [Letter from Neil Bibby](#)
- [Introducing the Market Rent Option for Scottish Tenants](#)

On 19 October, Neil Bibby MSP wrote to the Committee with additional information.

- [Letter from Neil Bibby](#)

On 21 October, the Committee received a letter from Star Pubs & Bars responding to the points made by Neil Bibby in his letter of 19 October.

- [Letter from Star Pubs & Bars](#)

- 1 [The Tied Pubs \(Scotland\) Bill \[as introduced\]](#)
- 2 [Tied Pubs \(Scotland\) Bill Policy Memorandum](#)
- 3 SBPA, written evidence
- 4 [Scottish Government, Research on the pub sector in Scotland phase 1: scoping study, December 2016](#)
- 5 EEFW Committee, Official Report, 25 August 2020, col 41
- 6 [SPICe summary of responses from anonymous survey](#)
- 7 [Note from focus group with tenants](#)
- 8 [Delegated Powers and Law Reform Committee, 45th Report 2020, Tied Pubs \(Scotland\) Bill: Stage 1](#)
- 9 SIBA, written evidence
- 10 Focus group note
- 11 Star Pubs and Bars, written evidence
- 12 EEFW Committee, Official Report, 25 August 2020, col 40
- 13 EEFW Committee, Official Report, 25 August 2020, col 41
- 14 EEFW Committee, Official Report, 1 September 2020, col 26-27
- 15 EEFW Committee, Official Report, 1 September 2020, col 28
- 16 EEFW Committee, Official Report, 1 September 2020, col 31
- 17 EEFW Committee, Official Report, 18 August 2020, col 3
- 18 CAMRA, written evidence
- 19 CAMRA, Appendix A of response to Neil Bibby MSP's consultation: <https://s3-eu-west-1.amazonaws.com/www1-camra/wp-content/uploads/2019/04/16101727/Tied-Pubs-Code-and-Adjudicator-Scotland-Bill-Consultation-CAMRA-response.pdf> [accessed on 8 October 2020]
- 20 SBPA, written evidence
- 21 SLTA, supplementary written evidence
- 22 Joe Ghaly, written evidence
- 23 Tennent Caledonian Breweries, written evidence
- 24 EEFW Committee, Official Report, 18 August 2020, col 30
- 25 EEFW Committee, Official Report, 18 August 2020, col 36
- 26 EEFW Committee, Official Report, 18 August 2020, col 37

- 27 EEFW Committee, Official Report, 25 August 2020, col 46
- 28 Neil Bibby MSP, supplementary evidence, 11 September 2020
- 29 Anonymous, written evidence
- 30 EEFW Committee, Official Report, 1 September 2020, col 28-29
- 31 Greene King, written evidence
- 32 SBPA, written evidence
- 33 SLTA, supplementary written evidence
- 34 SLTA, written evidence
- 35 Tied Pubs (Scotland) Bill Policy Memorandum
- 36 Star Pubs and Bars, written evidence
- 37 SIBA, written evidence
- 38 EEFW Committee, Official Report, 25 August 2020, col 40
- 39 FSB, written evidence
- 40 SBPA, written evidence
- 41 Admiral Taverns, written evidence
- 42 Trust Inns Ltd, written evidence
- 43 Tennent Caledonian Breweries, written evidence
- 44 Tennent Caledonian Breweries, written evidence
- 45 Star Pubs and Bars, written evidence
- 46 Star Pubs and Bars, written evidence
- 47 EEFW Committee, Official Report, 18 August 2020, col 20
- 48 Focus group note
- 49 [SPICe briefing, Tied Pubs \(Scotland\) Bill, July 2020](#)
- 50 Star Pubs and Bars, written evidence
- 51 Punch Pubs, written evidence
- 52 Star Pubs and Bars, written evidence
- 53 Punch Pubs, written evidence
- 54 EEFW Committee, Official Report, 18 August 2020, col 2-3
- 55 Punch Pubs, written evidence

- 56 CAMRA, written evidence
- 57 EEFW Committee, Official Report, 18 August 2020, col 5
- 58 EEFW Committee, Official Report, 18 August 2020, col 4
- 59 Focus group note
- 60 SLTA, supplementary evidence
- 61 EEFW Committee, Official Report, 1 September 2020, col 27
- 62 EEFW Committee, Official Report, 1 September 2020, col 30
- 63 SBPA, written evidence
- 64 FSB, written evidence
- 65 EEFW Committee, Official Report, 1 September 2020, col 31
- 66 Tied Pubs (Scotland) Bill, Policy Memorandum
- 67 British Pub Confederation, written evidence
- 68 Policy Memorandum
- 69 The Scottish Courts and Tribunal Service, written evidence
- 70 EEFW Committee, Official Report, 1 September 2020, col 39
- 71 Punch Pubs, written evidence
- 72 SPICe summary of survey responses.
- 73 Focus group note
- 74 Focus group note
- 75 EEFW Committee, Official Report, 25 August 2020, col 44
- 76 The Scottish Government memorandum on the Tied Pubs (Scotland) Bill
- 77 SPICe summary of survey responses
- 78 Letter to the Committee from Neil Bibby MSP, 19 October 2020
- 79 Letter to the Committee from Star Pubs and Bars, 21 October 2020
- 80 EEFW Committee, Official Report, 18 August 2020, col 16
- 81 G1 Group/ Iona Partnership
- 82 Star Pubs and Bars, written evidence
- 83 Star Pubs and Bars, written evidence
- 84 SBPA, written evidence

- 85 EEFW Committee, Official Report, 18 August 2020, col 34
- 86 EEFW Committee, Official Report, 18 August 2020, col 35
- 87 SLTA, written evidence
- 88 SIBA, written evidence
- 89 Focus group note
- 90 Focus group note
- 91 SPICe summary of survey responses
- 92 Scottish Government memorandum on the Tied Pubs (Scotland) Bill
- 93 EEFW Committee, Official Report, 1 September 2020, col 35-36
- 94 EEFW Committee, Official Report, 18 August 2020, col 9-10
- 95 Admiral Taverns, written evidence
- 96 Trust Inns Ltd, written evidence
- 97 SBPA, written evidence
- 98 SIBA, written evidence
- 99 EEFW Committee, Official Report, 18 August 2020, col 20
- 100 Focus group note
- 101 Tennent Caledonian Breweries, written evidence
- 102 Scottish Co-operative Party, written evidence
- 103 Punch Pubs, written evidence
- 104 Admiral Taverns, written evidence
- 105 EEFW Committee, Official report, 18 August 2020, col 19
- 106 EEFW Committee, Official Report, 1 September 2020, col 40
- 107 SBPA, supplementary written evidence
- 108 Punch Pubs, written evidence
- 109 G1 Group/ Iona Partnership
- 110 Star Pubs and Bars, written evidence
- 111 Punch Pubs, written evidence
- 112 EEFW Committee, Official Report, 18 August 2020, col 14
- 113 Star Pubs and Bars, written evidence

- 114 Hawthorn Leisure, written evidence
- 115 EEFW Committee, Official Report, 1 September 2020, col 32
- 116 Scottish Government memorandum on the Tied Pubs (Scotland) Bill
- 117 Burts Bar, written evidence
- 118 Hawthorn Leisure, written evidence
- 119 EEFW Committee, Official Report, 18 August 2020, col 32
- 120 Admiral Taverns, written evidence
- 121 Star Pubs and Bars, written evidence
- 122 Focus group note
- 123 EEFW Committee, Official Report, 1 September 2020, col 36 -37
- 124 Punch Pubs, written evidence
- 125 SBPA, written evidence
- 126 Summary of survey responses
- 127 EEFW Committee, Official Report, 1 September 2020, col 28
- 128 EEFW Committee, Official Report, 18 August 2020, col 18-19
- 129 EEFW Committee, Official Report, 18 August 2020, col 23
- 130 Hawthorn Leisure Ltd, written evidence
- 131 SPICE summary of survey responses
- 132 SLTA, written evidence
- 133 EEFW Committee, Official Report, 18 August 2020, col 10
- 134 Iain Taylor, written evidence
- 135 Tennents Caledonian Breweries
- 136 G1 Group/ Iona Pub Partnership, written evidence
- 137 SBPA, written evidence
- 138 Scottish Government, Research on the pub sector in Scotland phase 1: scoping study, December 2016
- 139 EEFW Committee, Official Report, 18 August 2020, col 5
- 140 Financial Memorandum, The Tied Pubs (Scotland) Bill
- 141 Star Pubs and Bars, written evidence

142 Admiral Taverns, written evidence

143 EEFW Committee, Official Report, 1 September 2020, col 45

