

Economy, Energy and Fair Work Committee
Tied Pubs (Scotland) Bill
Pub tenants focus group – Monday 10 August at 11am (Microsoft Teams)

Committee members in attendance: Michelle Ballantyne MSP, Colin Beattie MSP, Gordon MacDonald MSP, Rhoda Grant MSP and Richard Lyle MSP.

Pub tenants: 4 people participated in the focus group with a range of experience in the pub and hospitality industry and as pub tenants in tied arrangements.

Background (from SPICe briefing)

Tied pubs are pubs which are owned by a company (pubco) and rented out to the tenants, and where the terms of this lease mean that the tenant is sometimes paying below the market rate for rent. The tenant is also limited to only purchasing and stocking beer approved by the pub owning company, and usually at a rate above the usual wholesale rate for these products. These arrangements tend to lower the entry costs to the market, but mean that tied pubs might not be able to achieve the same profit margins as non-tied pubs. Around a quarter of Scotland's pubs operate on a tied basis: there are around 750 tied pubs in Scotland out of around [2,840 pubs in total](#).

Introductions and experiences

The participants started by introducing themselves and outlining their experience. Some participants had experience of running pubs in both Scotland and England and all had several decades of experience in the trade. The 4 participants had experience working with different pub-owning companies and a couple were also part of the Society of Independent Brewers (SIBA) alongside their pub tie. One participant had been in a pub tie for 2 years, but 2 participants had been running their pubs for around 20 years. Most were in full ties on all alcoholic drinks. For some this excluded wine and spirits. Two participants were able to access guest beers through SIBA. One participant had involvement in the development of the Pub Code in England and Wales.

The need for legislation

Members were keen to learn more about the participant's experiences and whether they felt that the proposed legislation would benefit pub tenants. The following issues were raised during the discussion:

- Participants said that the success of the pub tie was largely dependent on individual relationships between the pub tenants and their business development manager, who is employed by the pub company/brewer (pubco). The relationship is important and is much more successful if you can work together on a personal level. They said that the "fairness" of this relationship was variable.
- These relationships with the business development managers varied as did the relationships with the pubco more generally.

- It seemed to some participants that regardless of how many years the tenant had been in the tie and how much work had been put in by the tenant to make a profitable business, there was little support in tougher times.
- Participants talked about the inflated price of beer that they were paying in their tie compared to how much would be paid by freeholders. One participant said that they had to buy a minimum of 120 gallons of one beer every year, which means selling a keg of that brand every day. When the tenant looked at stocking a non-tie beer, each keg was increased from £130 to £190. He was discouraged by this price increase. The price that is being paid for the keg is then reflected in the price that the pub charges for a pint. The tenant is told by customers that his prices are not competitive – this is because the kegs are so expensive.
- Participants felt that the pubcos “rob Peter to pay Paul”. If they reduce the price on certain products, then prices are increased in other areas to compensate. Tenants were concerned that any additional costs to the pubco introduced by the legislation would be passed on to tenants in other ways.
- Participants highlighted problems that had been experienced implementing the Pubs Code in England and Wales. There was concern about the suitability of the arbitrator given a previous connection to a surveyor who worked with a pub-owning businesses. There is a perception among tenants that the adjudicator is not impartial and that this has caused frustration among tenants in England and Wales.
- “If the arbitration process is not fair or independent then the whole thing becomes a farce.”
- There was also a feeling that it was unclear who the Pub Code applies to in England and Wales (making it only applicable to pub-owning businesses with over 500 pubs caused confusion about who was included under the code).
- Members asked participants if they were familiar with the Voluntary Code in Scotland. The majority of participants had not heard of the code and had not looked into the current arbitration process in Scotland. One tenant had heard of it but was unaware that it was a Scottish code and did not know what it entailed.
- One tenant said that self-regulation had not been effective in England and Wales.
- It was highlighted that legislation is only useful if it is used and policed. It was felt that little had changed in England and Wales.
- The tenants’ hopes for the legislation are a “fairer playing field” on beer pricing and rent as well as the ability to sell more local products.
- Tenants highlighted that business rates are higher for pubs than any other businesses.

Market rent only (MRO)

A market rent only (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 conduct their business in the pub – for example a tie restricting the type of beers stocked and the price they are purchased for. The tenants highlighted several problems with rent, including the following points:

- Several of the tenants felt that their rent was very high and did not reflect market prices. One said, “I pay very high rent compared to other pubs around me.”
- There was concern that the relationship with the Pubco deteriorates when you start evoking MRO or other such legislation. The participants felt that tenants who had tried to evoke MRO in England and Wales were heavily penalised by the pubco.
- One tenant said that in England and Wales tenants had become frustrated with surveyors. There is a perception that surveyors are working with the pubco as this guarantees repeat work for the surveyor. It was not seen as being a fair process.
- The tenants said that the only time the MRO had been successful in England was when the when the whole process went to court and the judge decided what the deal should be (Charlie Brooker case). The rent agreed as a result was dramatically decreased. This is the only time that everyone (except the pubco) agreed that it was fair. Some people in the industry hoped that this case would set a precedent, but there have not been any further cases since. Participants felt it was important for court judgements to be part of the system in Scotland.
- Tenants felt that there was no incentive to make their pubs profitable as they were then punished for their success with large increases in rent. If you take on the lease for a pub which is struggling and you make it successful, your rent will be increased. “Risk and reward are not shared - the tenant is (and is STILL) penalised by the pubco.” This also discouraged tenants to invest in their pubs as they felt the balance between risk and reward was not shared.
- One participant said that their rent was reviewed just before lockdown based on the pub’s takings. The tenant has queried this increase with their business development manager and wants to re-negotiate but has received no response to their request for a meeting (despite the review taking place in March).
- During the first 12 weeks of lockdown, one pubco decided full rent should be paid. The tenant questioned this and hit a brick wall. There was no interest in negotiating. The tenants were with different pubcos but faced similar problems with this. Rent had been deferred during lockdown, but tenants were still expected to pay it. For some this had pushed them into debt for the first time. Tenants said that other pubcos had cancelled the rent for this period.
- There was concern that if the Bill is enacted and the cost of rent is fairer the pub-owning business will find another way to recuperate that loss of income (e.g. increasing cost of beer).
- Tenants also expressed concerns about the standard repayment for investment, which involves a permanent increase in rent. They did not feel this represented good value for money, and generally had not explored investment with the pubco as a result.
- “Once you have repaid the initial investment, there is no scope to renegotiate the arrangement between tenant and owner.”
- One tenant commented that the Business rate and rent doesn’t make sense to him. Rate is £18k per year, rateable value is about £35k per year, but rent

is £63k per year. The tenant then buys 365 kegs a year from the brewery and is again overcharged.

- The pub's takings and any investment received is reflected in the cost of rent. However, when the pubs were unable to trade (during the lockdown period) the rent was not reduced. Therefore, the rent only reflects trade when it suits the Pubco when takings are high – not when takings are low or non-existent. “We are rented not only on the building but what our turnover is. When our turnover was zero however our rent was not reduced (it was deferred but we still owe it). My rent is based on my turnover, which is roughly 10%”
- One tenant questioned who defines “fair market value”
- One participant said that rent seems to be based on what the pubco thinks you should be able to bring in, rather than market norms. “It’s cobbled up by Pubco’s, surveyors and the pubs code adjudicators.”
- Tenants invoking MRO in England are penalised with dilapidations and other charges

Guest beers

The proposed Bill includes a right for tenants to stock a guest beer. Tenants highlighted the following points:

- One participant said that the pub industry is very competitive in Edinburgh and having guest beers can give you a competitive advantage.
- One participant said that he is asked by customers and small local brewers if certain products can be sold in the pub, but he can't because of the tie. They don't feel that they can give customers what they want.
- Tenants agreed that they would like to support their local economies and sell more products from small Scottish brewers, but it's not possible.
- One tenant said they can buy a keg from Norfolk for £77, but a local Scottish product would be £135 per keg which discourages pubs from supporting other local businesses.

Investment in pubs

Tenants were asked about the investment made by the pubco in their pub:

- One tenant said that the outside of the pub was painted once, but that has been the only investment. They said that they are frequently offered loans from the owners, but it is cheaper to organise something yourself than to go through the pubco.
- If there is any investment that will be reflected in increased rent.
- However, there was also concern that an open MRO process would stop all investment in pubs by pubcos, as they would lose the certainty of repayment through rent increases above market value.
- “Medium to long term the investment that pub companies make in pub is not great. In the long term you pay through the nose for that investment. The Pubcos make their investment back threefold. Even although it is low cost

entry the money you pay to get in to the pub trade is not worth it in the long term.”

- “Investment from the Brewery is a double-edged sword because they can make it back elsewhere.”

What would be the positives and negatives of this Bill?

In summary, participants were asked what the positives and negatives of the Bill are. Participants hoped that there would only be positives:

- I feel it would make rent cheaper, would allow me to stock guest beer (which also benefits the small brewery). The small local brewery is not able to sell their beer to the 700+ tied pubs. Would benefit guests who could buy their beer at market value rather than me having to charge higher due to higher keg costs.
- Want to be looking at an equal playing field based around pricing and rent. The local guest ales that we used to do we can't any more. This helps the local breweries and the local economy. Wetherspoons around the corner can stock it though and there doesn't seem to be any fairness in that.
- May cause the pubco's to be more realistic about their rents and pricing. Adjudicators need to be fair and impartial. We really need an open and fair rent. Business rates for pub really need to be looked at. Pubs pay the highest business rates in town compared to other businesses.