

**Economy, Energy and Fair Work Committee****Tied Pubs (Scotland) Bill Stage 1 consideration – Survey of tied tenants****Background**

As part of its consideration of the Tied Pubs (Scotland) Bill at Stage One, the Committee published an anonymous online survey targeted at tied pub tenants. This note summarises the responses to the survey and includes the questions from the survey in **Annex A**.

**Executive summary**

93% of respondents felt that legislation was necessary in order to strengthen the hand of tenants in their relationship with pub-owning businesses, and 63% of respondents to the survey believed that the Bill would improve the relationship between pub-owning businesses and tenants. Those who felt it would improve the relationship generally believed that the Bill would provide greater balance in the relationship between pub-owning businesses and their tenants; several noted that the existing voluntary code favoured pub-owning businesses. Specifically, several respondents felt that the Bill would improve the position of tied-pub tenants at the time of rent reviews. Of those who did not believe that the Bill would improve the position of tied tenants, the most common reason given was concern that in England and Wales legislation had been ineffective and a source of friction between tenants and pub-owning businesses. The legislation would require an independent and strong arbitrator to function effectively.

**Detailed overview of responses**

In total there were 59 partially completed and 39 fully completed responses to the Committee's survey. 38 of the 39 respondents are currently in a tied-pub tenancy, with one respondent indicating that their tenancy ended due to litigation related to rent. The tenure of leases varied considerably – some respondents were tied for a period of several years, while some indicated that they had more than 5 years to run on their lease. Respondents indicated that they had been in a tied tenancy from between eight months to 32 years, and some had more than one tied pub lease.

63% of respondents felt that the Bill would improve the relationship between tied tenants and their pub owning business landlords. Among those who felt the Bill would improve the relationship, several respondents cited a more balanced relationship between tenants and their landlords as the reason that the Bill would be an improvement. In particular, tenants having the right to request a market rent only (MRO) lease at rent renewals could strengthen the hand of tenants. One response noted that:

*“If it allows the tenant to be able to pay a market rate for the property instead of the current arrangement whereby the inflated prices for purchasing products plus the rent are way in excess of the market rent.”*

Several respondents noted that at present the relationship favours pub-owning businesses. Some respondents expressed a concern that the success of the Bill would rely on effective implementation.

Of those who felt the Bill would not improve the relationship, several cited the experience in England and Wales, which is viewed by some respondents as ineffective for tenants and a source of friction in the relationship between tenants and pub-owning businesses.

Asked what currently works well, several respondents highlighted the lower costs of entry to the market that a tied lease offers, for example:

*“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”*

Some tenants mentioned effective business support from their landlords, although it was noted that this was highly dependent on how engaged the business development manager is. Many responses were negative, but without giving specific reasons.

### Potential Improvements

Asked what would make tied-pub leases better, tenants suggested that greater flexibility around product choice would help them to compete with free of tie pubs. Longer periods between rent reviews were also suggested – some tenants suggested that pub-owning businesses would increase rent too frequently, and view a short period of successful trading as rationale for increasing rent. For example, one respondent stated:

*“Sometimes becoming successful is a draw back as this results in a rent increase. Longer periods between rent reviews would give the tenant a chance to grow their business without financial penalty.”*

In general, tenants want to see a fairer split of risk and reward – currently there is a feeling that tenants take on most of the risk while pub-owning businesses take an outsized share of the reward. The opportunity to request an MRO lease was desirable, as was a strong, independent arbitrator to oversee the relationship between tenants and pub-owning businesses.

93% felt that legislation was necessary, in particular to secure the right of tenants to request an MRO lease. However, while tenants felt legislation was necessary, concerns were expressed about the experience in England and Wales. Tenants were concerned that there were a relatively low number of free of tie outcomes since the legislation came into force, and there was a perception among some tenants that the arbitrator was biased towards the pub-owning businesses.

94% of tenants welcomed the right for tenants to request an MRO in the Bill, feeling that this would improve the position of tenants:

*“I think the option should be available to all pub tenants. It would force pub owners to ensure their agreements are competitive and fair.”*

However, while a large majority felt that an MRO would be a positive step, tenants again expressed concerns that the process had been difficult to implement in England and Wales. Some respondents felt that pub-owning businesses would seek to recoup any lost income through setting the market rate of rent artificially high – and suggested that the option could only work if rents were set independently.

### Guest Beers

Most respondents felt that the right to stock at least one guest beer would have a positive impact on their business – however if this was just a single or a small number of guest beers then this positive impact would be significantly diminished:

*“it’s a completely token gesture at best”*

Tied pubs tenants with only a small number of non-tied beer options would still be at a considerable disadvantage compared to free-of-tie pubs in terms of customer choice. Again, several tenants expressed a concern that pub-owning businesses would seek to offset any guest beer rights through increasing the cost of tied products. A small number of tenants indicated that they already had flexibility through their lease to stock some non-tied products, and so in this respect the legislation would have no impact on their business at all. The ability to stock non-tied products was however seen as a benefit.

### Arbitration

On the proposed arbitration process, tenants again 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”*

However, a robust arbitration process could help to shift the relationship slightly in favour of tenants, as it would offer a form of redress. One respondent noted that if a dispute proceeded to arbitration, then in their view the relationship between tenant and the pub-owning business would have broken down.

### Investment

Respondents to the 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%) 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 tenants requested. 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.

Asked for any additional comments, tenants welcomed the proposed legislation as something which could provide more balance in the relationship between tied pub tenants and pub-owning businesses. Respondents expressed concerns about how it would be implemented, suggesting that from a tenant's point of view the legislation in England and Wales has been disappointing.

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## **Annex A**

In total the survey contained 15 questions. Questions 1 – 3 asked for acceptance of the Scottish Parliament's privacy policy and for information relating to organising the follow up focus group.

4. Are you a pub tenant currently in a tied tenancy arrangement?
5. How long have you been in this tied tenancy, and how long remains on your tie?
6. Have you previously been in a tied tenancy, and why did it end?
7. Do you think the bill will improve the relationship between pub-owning businesses and their tenants?
8. In your experience, are there things about tied-pub arrangements which currently work well?
9. In your experience, what would make tied-pub arrangements better?
10. Is legislation in this area necessary?
11. The Bill proposes that tied tenants have the option to apply for a quote for a market rent only (MRO) contract. Would this be something you'd be interested in and how do you think it would work in practice?
12. The Bill says that tenants should have the right to stock at least one guest beer at any time, irrespective of the terms of their contract. What impact would this have on your business?
13. The bill provides for an altered and simplified arbitration process compared to the process introduced in England and Wales. This gives pub-owning businesses and tied tenants the right to refer a dispute about the Scottish pubs code to the adjudicator for arbitration. Would the proposed arbitration process improve your relationship with your pub-owning company?
14. Have you ever accepted investment in your pub and how did you pay it back?
15. Do you have any other comments on the relationship between pub-owning businesses and tied tenants?