



The Scottish Parliament
Pàrlamaid na h-Alba

Neil Bibby

Member of the Scottish Parliament for West Scotland Region

Gordon Lindhurst MSP
Convener
Economy, Energy and Fair Work Committee
By email

22 January 2021

Tied Pubs (Scotland) Bill at Stage 2

Dear Gordon

Thank you for your letter of 21 December 2020 inviting me to comment on various issues related to the Tied Pubs (Scotland) Bill ahead of Stage 2 proceedings in February 2021. To help the Committee, my response is broken down into the three broad areas that the Committee invited me to respond on (amendments sought by the Scottish Government; issues raised in the Committee's Stage 1 report; and other issues highlighted by members of the Committee), and under each of those headings I respond to specific issues raised.

Amendments wanted by the Scottish Government

I have been engaging with the Minister over a sustained period, and we have discussed the amendments that the Scottish Government wants to see made to the Bill at Stage 2. The Minister outlined those amendments during the Stage 1 debate¹.

I have given a commitment to the Scottish Government that I intend to bring forward amendments to address the issues it has raised (including in the Stage 1 debate, in the Minister's conversations and correspondence with me). This includes amendments on the following issues highlighted in your letter:

- lengthening implementation and review timescales for the Scottish Pubs Code;
- the removal of elements of retrospection; and
- measures to ensure that levies on pub companies are proportionate.

¹ Scottish Parliament, Official Report, 26 November 2020. Available at:
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12969&mode=pdf>.

I understand, and support, the Scottish Government's practical reasons (particularly given the ongoing impacts of Covid 19) for wanting a longer period to draft, consult and introduce the Code, and to identify and appoint an adjudicator. It is an entirely reasonable position. Concerns have been raised with me, however, by the licensed trade about a lengthy interim period, where the Bill had been passed by the Scottish Parliament but would not be in force. Their principal concern is that such a lengthy interim period could allow a pub-owning business to take steps to avoid the Code by restructuring their business and making changes to contractual arrangements. I have alerted the Scottish Government to the trade's concerns and I note the Minister has said that, while a two-year implementation period should be provided for, it may not be required. While supporting a longer implementation period, I will consider what measures may be required to limit or prevent pub-owning businesses from trying to avoid the Code in such a way with the Minister.

Other issues raised in the Committee's Stage 1 Report

As I have previously stated, I intend to bring forward an amendment to address the court appeal process point which was raised in evidence to the Committee by the Scottish Courts and Tribunal Service, to ensure that the appeal is made to the most appropriate court. I intend to bring forward such an amendment to address the Committee's concerns.

In terms of other issues raised in the Committee's Stage 1 report (such as thresholds, guest beer arrangements, and the MRO option), I remain content that the provisions in the Bill are suitable and appropriate.

Introducing a threshold would risk excluding some tenants and incentivising pub-owning companies to restructure their businesses to ensure they did not meet any threshold set. I do not want to create differences amongst tied tenants in Scotland, with some covered by the Code and having access to the adjudicator, and others not, but I am mindful of the position of small businesses.

The guest beer arrangements are to be set out more fully in the Code, and therefore will likely be subject to further consultation and consideration, and I believe the framework set out in the Bill achieves my fundamental policy aim of ensuring that all tied tenants have the right to stock at least one guest beer of their choosing.

The MRO option is based on that in the 2015 legislation but has been simplified to take account of reported problems with implementing the option in England and Wales. I believe that the right to request an MRO should be available to all tenants without overly restrictive rules being applied.

I currently have no plans to bring forward amendments on those issues. I also have had no indications from the Scottish Government that it is planning to do so. However, should the Government, or any other MSPs, or indeed stakeholders, engage with me on these, or any other issues, then I will of course liaise constructively. Similarly, if any MSP brings forward amendments to any of these provisions then I will consider them carefully.

Other issues highlighted by some members of the Committee

Turning to other issues raised by members of the Committee, I have little further to add to the evidence I gave at Stage 1, and to my contributions to the Stage 1 debate, on any of the issues noted in your letter.

I am not in a position to provide precise data on the incomes pub tenants receive. A lack of transparency on tenant incomes and profit extraction is one of the reasons why I believe this Bill is necessary. I refer you to the evidence submitted to my own consultation, and during the Committee's own consultation and engagement. I recognise that some pub tenants who have responded to these various consultations think that the Bill is not necessary, but, as the evidence has consistently shown, there is a much larger number of tied tenants in Scotland who have shown their support for the Bill over a long period of time.

Your letter also refers to investments that some-pub owning businesses claim have been put on hold while the Bill progresses through the Parliament, and to the support some pub-owning businesses state they have provided to some of their tenants. You have heard views on these matters from pub-owning businesses, but also from tenants and sectoral bodies, many of whom have given a different view. I have made my own position on these issues clear and have nothing more to add at this stage.

You also ask whether an MRO option is applicable in other sectors, and, if so, what impact has it had. However, that is a difficult issue for me to comment on. A Market Rent Only option has been long argued for by tied pub tenants, their representatives, and other bodies, to address the issue of an overall rent made up of wet and dry rent elements and was implemented in England and Wales via the 2015 legislation. My Bill ensures that the Code must contain a simplified MRO option for Scottish tenants. I am therefore concerned with an MRO in the context of the tied pub sector only. My aim is to ensure that tenants in Scotland have at least the same rights as those in England and Wales; I am not pursuing this by comparison with what happens in other sectors.

The Scottish Government is not, so far as I know, seeking any amendments to address any of the issues raised in this part of the Committee's letter, and I can confirm that I also have no plans at present to bring forward amendments on these issues.

I hope you find this letter helpful and I look forward to engaging with the Committee when the Stage 2 proceedings begin in February. I understand that Committee members' views on this Bill have evolved, or are evolving, and I hope to achieve a consensus where the whole Parliament can support the Bill on a cross-party basis, as was the case with the relevant sections of the 2015 Act for England and Wales.

Yours sincerely,

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