

ECONOMY, ENERGY AND FAIR WORK COMMITTEE**TIED PUBS (SCOTLAND) BILL****SUBMISSION FROM****CAMRA****About CAMRA**

Thank you for providing the opportunity to submit our views on the Tied Pubs (Scotland) Bill.

CAMRA, the Campaign for Real Ale, campaigns to promote the social, community and public health benefits of well-run pubs. We have nearly 190,000 members across the UK and 4800 members in Scotland.

In our submission, we outline our position regarding how the current voluntary arrangements governing the relationships between tied tenants and pub-owning businesses in Scotland are not fit for purpose, and why the proposals in the Tied Pubs (Scotland) Bill would be beneficial to tied pub tenants and consumers.

We have taken each consultation question in turn below.

What are your views on the Bill overall? Do you think legislation in this area is necessary?

Many pubs in Scotland are struggling because pub companies are taking more than is fair or sustainable from the profits of their tied tenants.

Tied tenants are required to buy the beer they sell from their pub company rather than on the open market, and are often paying above market value in rent on their pubs. This means that licensees can pay over 50% more for beer than they would on the open market. This is compounded by the fact that they are often paying above market value for rents.

As a result, many licensees are struggling to make a living, contributing to the rate of pub closures in Scotland.

An accepted principle of a tied pub agreement is that a licensee will pay a higher price for beer than on the open market but will also receive business support and a lower rent from their pub company.

However, the 2014 study commissioned by CAMRA of 200 Scottish tied tenants about the tied pub sector in Scotland found that 96.5% of tied respondents believed that paying a reduced rent did not fully take in account the higher prices they paid for their tied products, and 74% of respondents felt that they were worse off due to their tied contract.

The current tied system in Scotland is unregulated by legislation and is creating an imbalance of power as pub companies develop a monopoly over the supply and cost of tied products, leaving licensees paying increasingly high prices for a restricted range of stock.

This is having a significant economic impact upon tied tenants and the viability of tied pubs in Scotland. The same 2014 study found that 54% of respondents stated their take home annual earnings as between £10,001 and £15,000, and 10.5% of respondents earned under £10,000.

This shows the importance of the proposed Pubs Code to the Scottish tied pub sector, as currently licensees are being denied a fair living, and are also unable to invest in their businesses, stimulate the local economy and create jobs through expansion.

Improvements in the quality of the tied pubs sector will also lead to more variety and choice for consumers.

CAMRA believes the Bill and the introduction of a Statutory Code and Adjudicator is necessary to fairly govern the relationship between tied licensees and their pub companies.

This would regulate the relationship between tied tenants and their pub companies, ensuring that tied tenants in Scotland are no worse off than those who are free of tie.

Pub company reform happened in England and Wales because pub companies there had failed to regulate themselves properly and treat their tenants fairly. We still have the same system in Scotland, which is failing tenants and causing them to go out business, which means that more pubs close.

We need a Pubs Code to be law to stop this happening.

2. Do you think the Bill achieves its aim of improving the relationship between pub-owning businesses and their tenants?

Yes.

It is CAMRA's view that legislation is the only effective way to regulate the relationship between pub companies and their tenants.

A Pubs Code and Adjudicator were enshrined in law in England and Wales through the Small Business Enterprise and Employment Act 2015; this followed a Select Committee inquiry which found that industry self-regulation had been a failure, despite ten years and six versions of the voluntary Code being produced. The current system of self-regulation in Scotland is run by the Scottish equivalent of the industry group that governed the failed voluntary Code in England and Wales.

The Scottish Beer and Pub Association represents pub companies and brewers, but not tenants of pub companies. The Scottish Beer and Pub Association's voluntary Industry Code is very similar to those used when industry self-regulation was unsuccessfully attempted in England and Wales.

The current system of self-regulation and voluntary codes means that tied pub tenants are not treated fairly. This Bill would improve the relationship by putting this on a statutory footing.

The Scottish Beer and Pub Association has a voluntary code of practice, which is similar to the voluntary code followed in England and Wales before the statutory Pubs Code and Adjudicator came into force.

CAMRA believe that industry self-regulation under the voluntary Scottish code is not working and will not work, just as the voluntary code did not work in England and Wales.

The Scottish voluntary code provides requirements for pub companies to disclose certain information to their tenants, but crucially does not cover ensuring that rents and tied product prices are fair and equitable.

Furthermore, to date we have not been made aware of a single person making a referral under the voluntary Code in Scotland, under its current or previous version. Our contention is that this is because tenants with valid concerns either have no awareness of the self-regulatory system or little confidence in it.

The experiences of tied tenants during the COVID-19 crisis (where some tied tenants did not receive help with rent payments during lockdown even though the voluntary code states that all pub-owning businesses must take action when a tenant is “adversely affected by a material change in circumstance beyond their control”) further reinforces our belief that the current system is not fit for purpose.

3. Could the Bill have any impact on investment in the pub sector in Scotland?

There is no reason why a Pubs Code and Adjudicator would lead to significant loss of investment in the pub sector in Scotland.

Indeed, the provision of a Market Rent Only option will allow licensees substantially to increase their profits, and enable them to reinvest money in their businesses, boosting the quality of pubs in Scotland and the local economy.

This will apply both to licensees who take a Market Rent Only option and to those tied tenants who see the terms of their tied contracts improved as pub companies are incentivised to offer more attractive tied deals.

CAMRA would support an amendment to the Bill to introduce a waiver from Market Rent Only rights for a period of time in return for significant investment from a pub company – which is included in the Pubs Code that is in force in England and Wales.

The British Beer and Pub Association supported the proposals for an investment waiver in the Pubs Code for England and Wales. We believe that including equivalent measures in this Bill would ensure pub companies can continue to invest in Scottish pubs at a high level.

4. Should the Scottish Pubs Code apply to all pub owning businesses and tenants in Scotland?

CAMRA’s policy is that a Scottish Pubs Code should apply to all tied pubs in Scotland, and that the Market Rent Only option should only apply to tenants of larger pubcos (defined as one owning 100 pubs or more in Scotland).

5. Do you have any comments on the role of the Adjudicator?

It is vital that the Adjudicator is given a suitable level of power to act as a true deterrent to pub companies against breaking the Code.

We need an Adjudicator in Scotland to have the power of being able to fine pub companies who break the Code so that the possibility that they might be given a large fine puts them off breaking the Code in the first place. This is in line with the Adjudicator for England and Wales, who has the power to impose fines of up to 1% of the turnover of the pub companies concerned.

A power to impose financial penalties is the only way to ensure that the Adjudicator has the necessary influence within the industry to deter breaches in the first place and prevent repeated breaches for the same reasons at a later time.

Effective sanctions will also give tenants the confidence to report breaches, that are likely to be dealt with satisfactorily.

It is also worth noting that while the Adjudicator should have this power, it does not preclude the Adjudicator choosing to take alternative enforcement action, such as imposing a smaller fine than the maximum or asking a pub company to provide undertakings as to future conduct in lieu of a financial penalty, in which case if the undertakings are not fulfilled then the financial penalty can be levied promptly.

When reviewing the effectiveness of the Code and Adjudicator governing pubs in England and Wales as part of the 2019 statutory review, CAMRA criticised the effectiveness of the Pubs Code Adjudicator for failing to impose a single financial penalty on a POB for failing to comply with the general principles of the Code during the first review period.

We therefore believe that giving the Adjudicator a suitable level of power would make a Scottish Code and Adjudicator more effective than has been the case in England and Wales.

6. The Policy Memorandum states that the Bill aims to adapt the 2015 Act to Scottish circumstances and to avoid problems experienced in implementing the Act in England and Wales. Do you think the Bill meets these aims?

Yes.

The 2014 study commissioned by CAMRA of 200 Scottish tied tenants about the tied pub sector in Scotland found that 96.5% of tied respondents believed that paying a reduced rent did not fully take in account the higher prices they paid for their tied products, and 74% of respondents felt that they were worse off due to their tied contract. The same 2014 study found that 54% of respondents stated their take home annual earnings as between £10,001 and £15,000, and 10.5% of respondents earned under £10,000. Full results of this study are included in Appendix 1.

The Bill would provide a solution to the problems that tied tenants in Scotland are facing.

The Bill has significant differences from the legislation governing the sector in England and Wales which we believe will improve the effectiveness of a Scottish Code and Adjudicator, delivering significant benefits for tied pub tenants and consumers.

These changes include:

- The Adjudicator cannot have recent professional involvement in the trade in order to be, and be seen to be, independent
- Shorter review periods in order to enhance scrutiny of the Code and the Adjudicator
- A simpler MRO process
- The inclusion of a third regulatory principle – ‘fair share of risk and reward’ to make clear that pub-owning businesses should not exploit their position

A survey of tied tenants in England and Wales carried out by CAMRA ahead of a 2019 UK Government review of the effectiveness of the pubs code and adjudicator found that only 6.7% of tied tenants who have come in touch with the MRO process found it simple and easy to navigate, vastly outnumbered by those who did not (74%). Further comments from tied tenants who have used the MRO process were that the process is too complex and lengthy, and therefore has become expensive, risky, and liable to abuse by POBs.

In addition, CAMRA has uncovered numerous reports of pub-operating businesses attempting to frustrate the MRO process and game the Code governing England and Wales. This is not consistent with the principle of fair and lawful dealing.

We are, therefore, encouraged by simpler Market Rent Only process proposed in the Tied Pubs (Scotland) Bill.

This Bill differs from the legislation in England and Wales, as (a) all tied pub tenants in Scotland will be covered) and (b) there will be an automatic right to exercise the market-rent-only option (rather than it being subject to various conditions and trigger points, as in the 2015 Act).

CAMRA have concerns about the Scottish Government’s research into the tied pub sector in Scotland, the results of which were released in December 2016. CAMRA were extremely disappointed with the methodology of this survey. Despite the government’s intention to gather financial information from several hundred pubs, it only resulted in the examination of 25 case studies; and just 10 of which were tied licensees.

This does not provide a sufficient sample to be representative of Scotland’s pubs sector or to provide any confidence in the report’s findings.

7. The Bill proposes that tied tenants have the option to apply to their pub owning business for a quote for a ‘Market rent only’ (MRO) contract. Do you agree with this proposal and how do you think it would work in practice?

A mandatory Market Rent Only option for licensees tied to large pub companies is the simplest way to allow market forces to work, and remove the current disadvantage to tied licensees compared with free of tie lessees.

It is essential that rents offered alongside free of tie agreements are at a fair, open market rate to ensure that the principle that a tied licensee should be no worse off than a free-of-tie licensee is achieved.

Among the benefits of a Market Rent Only option would be that pub companies would be incentivised to act in a competitive manner and make their tied deals fair and attractive, as failure to do so would result in a high proportion of their tied licensees choosing to become free of tie.

We would expect that, as pub companies improve their deals to compete better with new free of tie options, only a smaller number of existing licensees would opt to go free of tie.

As pub companies improve their tied offers to tenants, consumers could expect to see better product ranges in pubs, for example more locally brewed beers.

The provision of a Market Rent Only option will allow licensees substantially to increase their profits, and enable them to reinvest money in their businesses, boosting the quality of pubs in Scotland and the local economy.

This will apply both to licensees who take a Market Rent Only option and to those tied tenants who see the terms of their tied contracts improved as pub companies are incentivised to offer more attractive tied deals.

A Market Rent Only option will also help improve consumer choice, and benefit smaller brewers who will be offered more routes to market as tied licensees taking that option will no longer have stocking requirements imposed on them and will instead be able to purchase beer at market cost. This will increase the variety of beer on offer to consumers, and allow licensees to stock locally produced, high quality real ales.

8. The Bill proposes 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?

The brewing industry in Scotland has grown rapidly over recent years. As a result of this growth there is now a wealth of smaller brewers producing high price point, high quality cask beer.

However, they are struggling to gain access to market in tied pubs, owing to the beer tie and to the imposition by pub companies on tied tenants of a set stock list.

The beer tie is resulting in restricted consumer choice, as smaller brewers cannot gain access to the tied pub sector. Small brewers struggle to gain access to the tied pub market as they are unable to supply the minimum volumes, discounts and logistics demanded by large wholesale and pub owning companies.

Therefore, CAMRA agrees with the provision for Guest Beer Rights in a Scottish Pub Code, as this would allow tied tenants to stock a guest beer of their choosing, rather than being restricted by the range and prices of the stocking lists of their pub companies.

9. The Bill proposes that the office of Pub Code Adjudicator will be funded through a levy on pub-owning companies in scope of the code. The Financial Memorandum estimates that annual costs for pub-owning businesses will be around £6,000 to £86,700 depending on size. The Committee would welcome any views of these estimates (and the assumptions around the volume of work for the office of the Pub Code Adjudicator) and the funding model.

CAMRA agrees that the Adjudicator should be funded by those that the Pubs Code seeks to regulate – namely pub owning companies operating in Scotland.

Therefore, it is acceptable, as with the Pubs Code Adjudicator for England and Wales, for a levy to be imposed on pub owning companies to which the Code applies, to pay for the Adjudicator and their office to function.

As the number of tied pubs in Scotland is lower than that in England and Wales, the levy charges may not need to be as high in Scotland.

We believe that the Adjudicator position may only need to be a part-time position, which will bring any cost burden down for pub owning companies paying a levy.

10. Do you have any other comments on the Bill?

No.