

ECONOMY, ENERGY AND FAIR WORK COMMITTEE**TIED PUBS (SCOTLAND) BILL****SUBMISSION FROM****Forum of British Pubs****1. What are your views on the Bill overall? Do you think that legislation in this area is necessary?**

The simple fact is that the tie was never intended to encompass all that it currently does, the tie was a simple solution to ensuring that the beer that the brewers produced was sold in the pubs they owned, rent was adjusted accordingly and you paid a slightly higher price for the beer, but that trade off was accepted. The tie extended into brewers wholesale divisions and started to cover wines and spirits, some owned and produced by the brewers. But the tie has grown to cover everything the tenant buys into the pub including food, snacks, fruit machines and even insurance and leasing agreements. Many of these pub owning businesses are no longer brewers and are a retail business, who the forum of British Pubs feel should not benefit from the tie. This unbalances the business model with the pub owning company having too much power over the tenant something they have exploited and this leads to the need for effective legislation to protect tenants, who are often kept in a state of perpetual jeopardy.

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

In the short term it will not improve the relationship as the pub company will not like the reduction in their power, but in the long run it will balance the relationship and create a fairer and more robust tenanted pub sector

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

A rebalance of power in the relationship will actually result in more investment, if the power of the larger players is reduced then more freehouses and small groups will emerge and take on the pubs and will have to invest in their estate in order to compete effectively

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

Yes. The forum of British Pubs believes that all tenants – tied, part-tied, free-of-tie and genuine MRO tenants should have the statutory right to challenge exploitative rents - and have access to an independent rent review. This should be a simple time bound and cost effective process

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

The adjudicator needs to have the power and the authority to do the role, this has not happened in England and Wales, it also has to be said the Adjudicator is in effect an Arbitrator and this leads to lots of problems. Every arbitration is individual, confidential and the adjudicator cant set examples and set precedent.

The PCA also needs to be engaging with as wide a range of views in the industry as possible, all the stakeholders need to feel engaged with, listened to and involved, something that hasn't happened in England and Wales.

The person who is given the role needs to be carefully chosen and not be conflicted in any way!

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?

The key would seem to be in not losing the primary aims of the legislation when drafting the code something that happened with the code in England and Wales and has led to many problems. It needs to be genuine, simple to achieve, cheap and put some power back in the hands of the tenant, who if they are being treated fairly will have no need to

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?

There has to be a genuine market rent only option and anything with a lease agreement and a buying contract attached is not a genuine MRO, Genuine MRO does what it says on the tin offers market rent only

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?

It would support and encourage the growing micro business sector by giving them access to more points of sale and adapt to customer demands and give consumers more choice, but it doesn't really help the tenant themselves

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.

The adjudicator needs the right power, responsibility and authority to do the job first and foremost, if that works and the PCA has the power to properly adjudicate then the number of cases they deal with drops and so do costs. Unlike the England and Wales model where the sheer number of arbitrations increases complexity and costs

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

Learn from the mistakes made in England and Wales where the two prime foundations of creating fair and lawful dealing between pub companies and tenants and that tenants should be no worse of than free of tie tenants and the MRO as a means of choice for the tenant were lost!