

ECONOMY, ENERGY AND FAIR WORK COMMITTEE

TIED PUBS (SCOTLAND) BILL

SUBMISSION FROM

Scottish Beer & Pub Association

Tied Pubs (Scotland) Bill - SBPA draft response to the Economy, Energy and Fair Work Committee's Call for Evidence

This submission is on behalf of the Scottish Beer & Pub Association's pub-owning company members. The Scottish Beer & Pub Association (SBPA) is the leading trade body representing Scotland's brewers and pub companies. As part of the UK-wide, BBPA, our members account for 90 percent of the beer brewer in the UK and around half of the nation's pubs. In Scotland, the beer and pub sector add £1.66 billion to the economy every year, supporting 66,830 jobs and paying £780 million in wages annually.

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

- We believe that there is no evidence to show that legislation is needed in Scotland and its introduction would be detrimental to our sector and the wider Scottish economy. This was also the conclusion of the independent study commissioned by the Scottish Government¹, conducted by APS Scotland and published on 6 December 2016:

"The evidence collected did not suggest that any part of the pub sector in Scotland was unfairly disadvantaged in relation to another..."
Research on the pub sector in Scotland phase 1: scoping study (2016).

- This study was commissioned following the introduction of legislation in England and Wales (which the Tied Pubs (Scotland) Bill largely seeks to emulate), to identify if any action was required in Scotland. It showed there was not. Indeed, to emphasize this point, the Scottish Government report points out that:

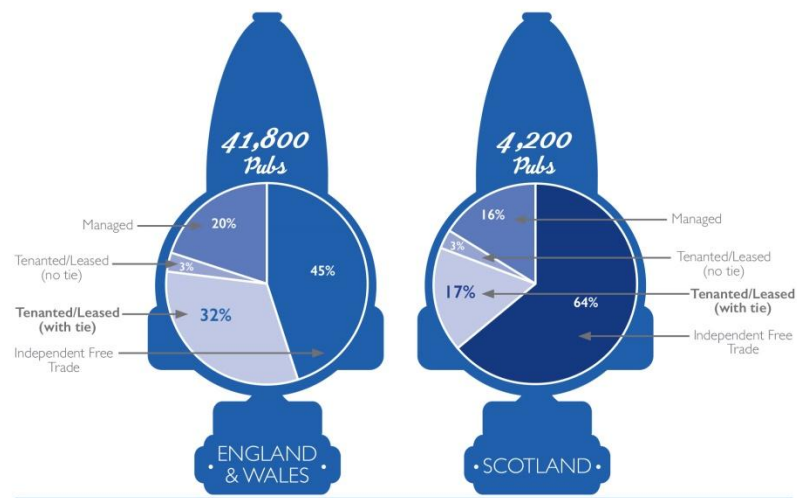
"Until the UKG indicated it would legislate on the issue, no robust representations had been made to Scottish Ministers by anyone operating in the tied pub sector in Scotland, including taking any disputes to established dispute resolution schemes (such as the Pubs Independent Rent Review Scheme (PIRRS) and Pubs Independent Conciliation and Arbitration Service (PICA))." Research on the pub sector in Scotland phase 1: scoping study (2016).

- Neil Bibby MSP announced his intention to lodge his private member's Bill before the publication of this report and took no consideration of its findings. Moreover, Mr. Bibby went on to reject and discard the study's findings, citing

¹ Research on the pub sector in Scotland phase 1: scoping study

his own consultation exercise as evidence of the requirement for legislation. This was despite the fact the research conducted by the Scottish Government was significantly more detailed in comparison to Mr. Bibby's consultation, with two-hour interviews in comparison to a short questionnaire.

- The legislation in England and Wales also followed four Select Committee Inquiries (2004, 2009, 2010 and 2011) which had identified reports of significant issues. It has always been evident that Scotland has had far fewer instances of conflict between operators and pub-owning companies, largely due to the markedly different nature of the landlord-tenant relationships, and accompanying legal agreements in Scotland. Many of the issues in England and Wales were complicated by the fact that a significant number of pubs included accommodation where the tenant would live, often with other members of their family. This is a very rare occurrence in Scotland.
- The make-up of the Scottish pub market is also radically different to that in England and Wales. In Scotland, tied-pubs make up only 17% of the market, or 750 pubs, in comparison to England and Wales where it is 39% of the market and nearly 20,000 pubs. The vast majority of pubs in Scotland operate under the Independent Free Trade Model (64% / 3000 pubs), while 13% (550 pubs) are managed and 5% (225 pubs) are Leased and Tenanted with no-tie agreement.



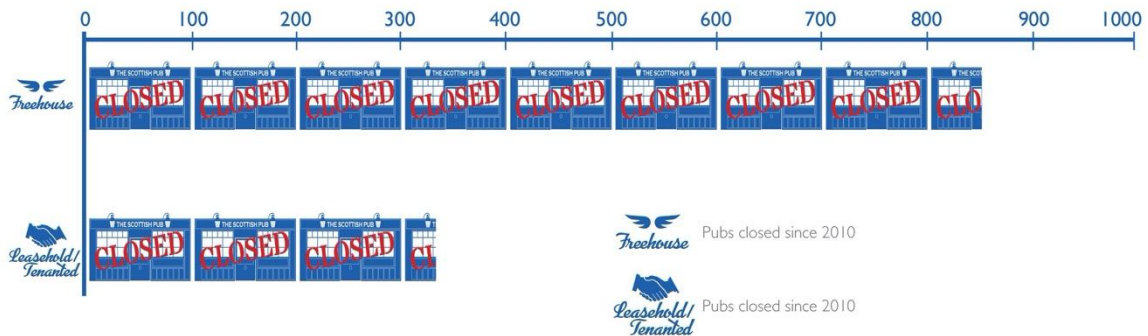
Img 1: Data provided by CGA and BBPA

- As the supporting documents for the Bill point out, this legislation – whilst coming at a large cost – would only impact an estimated 750 pubs in Scotland, with Mr. Bibby estimating that there would only be 11 pubs applying to the dispute resolution process each year and 8 arbitrations. This number is extremely small, and can surely be managed by alternate means, which will not destroy investment in the Scottish pubs sector, threatening jobs and livelihoods and community hubs across the country.

- As highlighted in our response to Question 3 the Bill will present a real risk to the investment in the industry.
- Since the Bill was introduced on the 3rd of February 2020 pub-owning businesses have undertaken a significant review of planned investment spend in Scotland for 2020, with at least £10 million not commencing as a result of the prospect of legislation. If passed into law, this Bill will see investment continue to reduce and with it an overall decline of the pub estate in Scotland. This is important at the best of times, but will never be more critical than during the economic recovery period following the current Covid-19 pandemic.
- The pandemic has been devastating to the hospitality industry and the recovery will be a challenge unlike any we have seen before. Every pub in the country being forced to close for almost four months is something which has never happened before, even during wars and through previous times of crisis. Government support during this time has been crucial in providing a bridge over to the other side of the crisis, which is hugely welcomed, but a result is that the true economic impact is still to be properly felt and understood, especially in our sector.
- The next 6-12 months will be crucial for the hospitality industry, cashflow and investment will be vital to pubs but even with this, the macro-economic climate and wider challenges could see businesses close and jobs lost. The tied-partnership model will be beneficial during this period due to the shared risks and rewards for operators and pub-owning companies in pubs succeeding, but further government support will still be needed. This is especially true for those in the independent free trade which do not have the benefit or support of pub-owning company.
- Parliament and Government need to remain focused on providing meaningful support for the whole of the hospitality industry to help businesses through this time, not adding restrictions which come with a cost to government and industry – which this Bill will do. The additional government spend which would be required to fund the setup of a statutory code would be better spent through targeted support for our sector. This would have a positive impact on jobs, our supply chain and the wider economy, while this legislation would have the opposite.
- Understandably, the Bill of course doesn't take into consideration the impact of COVID-19 because it was written ahead of the pandemic, but these impacts should nonetheless be noted. The landscape of the pub sector and wider hospitality industry will likely change enormously over the next 12 months with the unprecedented challenge in recovery. The Bill was ill-considered and bad for industry before the pandemic, but the problems the legislation will create will now likely be amplified due to the desperate need for investment.
- It also removes the entrepreneurship opportunities from thousands of operators who have used the tied model as a low-cost entry into business

ownership which also provides benefits such as flexibility, support, and autonomy to develop unique and scalable businesses.

- As Neil Bibby acknowledges², this proposal will lead to more pub closures in the tenanted and leased sector and more job losses. Indeed, closures in the tenanted and leased sector are less than half of that in independent free trade over the last 10 years. This illustrates that the issues impacting pubs and leading to closures is not due to the tied-partnership, but wider factors are resulting in the closure of premises across Scotland.



Img 2: Date provided by CGA

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

- No – we do not believe the legislation will lead to an improvement in the relationship between pub-owning businesses and their tenants. Indeed, we dispute the premise that the relationship may somehow be poor. The relationship between pub-owning companies and their tenant operators in Scotland is already strong, with the Tied-partnership model ensuring both the tenant and the PubCo have a stake in the continued success of the business. Pub-owning companies also as part of standard practice regularly undertake tenant surveys to gauge operators' opinions and their needs.
- The leased-and-tenanted model is a mutually beneficial partnership agreement, which has existed for over 100 years. It affords people across Scotland the opportunity to own and run their own business with very little initial investment, limited risk and targeted business support hence its popularity and longevity., Tenants had an average estimated net income of £38,000 based on rent reviews/new agreements in 2019.
- The nature of the Tied-partnership model means that it's in the pub-owning companies' best interest to ensure that operators are happy with their agreement and that the both parties see mutual benefit. There are a number of pub-owning companies and the nature of the sector means that accomplished operators, those who know how to run pubs successfully and

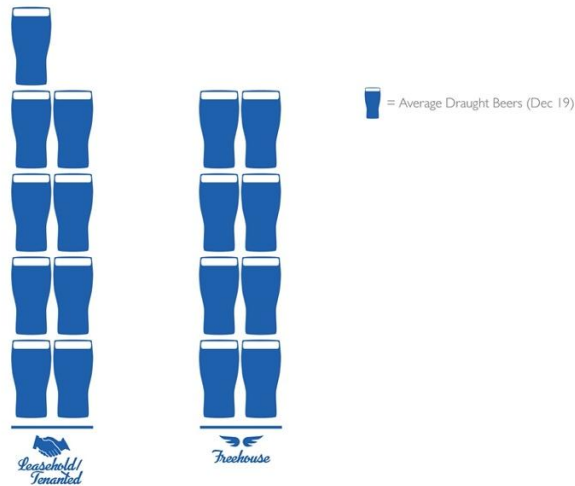
² <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/tied-pubs-scotland-bill/introduced/policy-memorandum-tied-pubs-scotland-bill.pdf>

make them profitable are prized. As a result, they will often be approached to take on new premises and it is not uncommon for multiple operators (those who run more than one premise) to rent several pubs from different pub-owning businesses. This creates competition for successful operators between the pub companies, with the operator benefitting in the form of improved agreement terms and helps maintain health relationships between both parties.

- Disagreements do happen on occasion, as is the case in many business arrangements but as previously noted, these are few and far between - since 2016, there has only been one complaint to the Pub Governing Body in Scotland – and the key point is that both operator and pub-owning business have a genuine shared interest in the ongoing sustainability of the pub. It is not in the pub-owning businesses interest to overcharge or unfairly burden the operator financially, as both will ultimately lose out if the pub fails or isn't financially viable.
- Pubs face an increasing number of challenges to staying profitable such as some of the highest VAT rates, notwithstanding the temporary VAT cut announced last week and beer duty in Europe; increased competition from casual dining and supermarkets, and a long-running drip feed of well-intentioned policy interventions that have ultimately harmed the economic sustainability of pub businesses.
- In recent years, this has included the ban on happy hours, changes in the drink-drive limit, the smoking ban, minimum wage increase, pension auto-enrolment and a host of other cost increases. We do not argue against these policies and their merits however it must be acknowledged that they all impact on the financial viability of running a hospitality business.
- It is somewhat understandable that with these additional pressures, coupled with a decrease in the amount of alcohol being consumed generally and continued shift towards off-sales (even before the pandemic), can lead to the occasional disagreement between tenant and landlord. However the industry has already taken significant steps to introduce mechanisms to resolve any disagreements swiftly and fairly. As already highlighted though, these have been few and far between in Scotland. Where there is an issue, operators already have access to an independent, low-cost dispute resolution system which already covers the majority of pubs which this Bill would reach (detailed in our response to question 5) and strengthening that with the establishment of the Scottish Pubs Governing Body.
- Pub-owning businesses have also sought to strengthen the relationships with their tenants through a series of industry initiatives launched in 2019. These are:
 - **Strengthening and promoting tenant rights through the creation of a Scottish Pub Governing Body**
We [PubCos] commit to reviewing and promoting the industry-leading Scottish Code of Practice. Launched in 2016, it expanded on existing

protections in place under a Code of Practice that had been in operation on a UK-wide basis for a number of years. It gives tenants extensive rights, including access to Scottish arbitration panels and procedures where disputes arise, overseen by a newly created Scottish Pub Governing Body. We will promote the Code and ensure all tied tenants are fully aware of their rights and are informed of these prior to signing new or extension contractual agreements and are regularly reminded about their rights through their BDMs. We will continue to seek views from stakeholders on further enhancements.

- **Supporting Scottish communities**
Pubs should be at the centre of community life and can provide essential local services which may struggle in the face of closing post offices and other services upon which communities depend. Subject to a firm business plan, we will encourage and provide funding towards 'Pub is the Hub' pilots in Scotland, where pubs host community services such as post offices, local shops, tourist information and other important local organisations and activities on their premises.
- **Offering tenants greater flexibility to sell local beers and ales**
We commit to give our tenants more opportunity to sell locally-sourced cask ales and craft beers in tied pubs, through a range of measures. We will continue to support the innovative Society of Independent Brewers Beerflex scheme, as well as providing tailored solutions to individual tenants. This will allow access to a broad range of Scottish beers and help to support independent Scottish brewers by providing routes to market. This will introduce even greater flexibility and choice to current and future tied pub agreements across the sector.
- **Funding the research and publication of an annual independent "State of the nation" report on the Scottish pubs sector**
We commit to fund and publish an annual report into the Scottish Pub Sector, which will include up-to-date data and analysis of the key challenges facing licensees which will offer real and valuable insight into the industry. The findings will be publicly available, and the full data set shared with policy makers for open discussion.
- In addition to the commitment to increasing choice outlined in the industry initiatives above, we can see that that the independent free trade (IFT) actually has on average less choice than those in tied-partnerships. This shows that contrary to the narrative of those championing the bill, this shows that there is no issue with choice for customers and the legislation could actually see a reduction in number of available products and brands.



Img 3: Data provided by CGA

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

- The Bill has already had a significant, detrimental impact on investment in the pub sector in Scotland with at least £10 million of planned investment being paused since it was introduced in February 2020.
- The reason investment is fundamentally threatened because of the Bill is because it creates uncertainty over whether or not any investment will be able to be recouped by the pub-owning company before a tenant chose to seek an MRO agreement. The nature of our industry means that regular investments into sites to modernise, keep up with regulations and to remain competitive and meet the needs of today's consumer in an increasingly crowded market are critical. The tied-partnership model gives pub owning businesses the ability to invest significant sums of money as the length of agreements means they can have confidence in being able to recover their injection of capital.
- In the last two years, more than one in six tied pubs received significant capital investment each year, averaging at over £70,000 per pub, and in individual cases investments of up to and beyond £500,000. In addition, companies spend on average between £2000 and £4000 on general repairs and maintenance in over 80% of their pubs. This investment would only be available via commercial banks and through brewery loans if the pub is not in a tied-partnership. Whilst these are viable routes for some, access to commercial finance and the cost will often be prohibitive for many small pub businesses.
- Providing tenants with an ability to “go MRO” in this form would mean that there will be no certainty for the pub-owning businesses to invest in Tied-pub sites. Instead, they would be incentivised to redirect these investments to their managed pubs and/or towards pubs outside of Scotland (especially since the lack of legislation sees us currently receive a greater proportion of investment). It would also simultaneously incentivise pub-owning companies

to turn their tied-pubs into managed pubs, as the threat of losing investments through an operator going MRO would not exist if the site is managed. This removes much valued and successful entrepreneurship opportunities for ordinary people now and in the future (as highlight in our response to question 0).

- Removing this source of investment means that pubs' only access to funding would be through brewery loans which would 'tie' the operator again but without any of the positive elements offered by the Tied-model, including special commercial or financial advantage (SCORFA) benefits and protections under the Scottish Pubs Code. This type of investment also does not include the shared risk element between the operator and the pub-owning company, where there it is in the clear interest of both parties to grow the pubs business.
- We believe that the Bill will continue have a significant detrimental impact on investment in the pub sector and as evidence by what has transpired in England & Wales where investment has been reduced as a direct result of the 2015 Act with PubCos preferring to invest greater sums in Scotland where the market was viewed more favourably. This is illustrated by Heineken UK investing twice the amount per pub in Scotland compared to England and Wales, equating to an additional spend of £5.5 million over the last five years into the Scottish economy.
- Other pub companies have also invested favourably in Scotland, which has helped lead the rejuvenation of many of the country's most loved pubs and making a significant contribution to our tourism offer.
- This over-investment in Scotland from pub-owning businesses since the introduction of the English and Welsh legislation would be entirely lost if the Tied-Pubs (Scotland) Bill is passed into law. Not only would we lose out on that added investment and in turn fewer jobs would be created, but we will see our economic recovery from the pandemic be impeded to a higher degree. Our sector is already one of the worst hit as a result of this pandemic, with pubs completely shut for over three months and the recovery period for our sector expected to last well into 2021. This is the worst possible time to be undermining investment, which is what this Bill does. We believe that this is a bad Bill for the pub sector irrespective of the timing, however to introduce it now as the sector tries to recover from the Covid-19 outbreak could cause irrevocable damage.
- Covid-19 and economic downturn means investment is required more than ever; this Bill was a risk before the pandemic and entirely ill-judged now.

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

- We do not believe the proposal should proceed and cover any pub-owning businesses, however we believe it must be noted that this goes significantly further than the 2015 English and Welsh legislation, and as a result will likely create a number of additional issues which must be addressed.

- The Statutory Code in England & Wales only covers tenants of pubs-owning business with over 500 properties. By removing any sort of threshold, this legislation will mean that pub-owning businesses with as few as 1 or 2 pubs will be covered by the regulation. These types of pub-owning businesses operating tied arrangements were never included with the 2015 Act as the impact would create a disproportionate burden due to the costs required in supporting the code for what are predominantly SMEs. Many of these type of pub-owning businesses (fewer than 20 outlets) will operate within a selected geographic area and provide investment in areas of the country which are sometimes overlooked by larger businesses. This Bill will disincentivise that.
- This will further encourage a move away from the tied-model and decrease in entrepreneurship opportunities in communities where they are arguably needed most, especially as we look to support the economic recovery from the Covid-19 pandemic.
- Simultaneously, due to the relatively small number of pub-owning businesses operating a tied model, any threshold would risk unfairly impacting as few as one or two companies which could present numerous legal issues.

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

- Establishing and running an Adjudicator will come with excessively high-costs, which we believe to be have been radically underestimated in the Tied Pubs (Scotland) Bill proposal – we detail this in response to question 9 – only to cover roughly 750 pubs and only resulting in “*approximately 11 enquiries, 8 arbitration cases, and 23 MRO applications*”³ every year. It also duplicates the work of the Scottish Pub Governing Body (SPGB) and Scottish Pubs code.
- The Scottish Pubs code⁴, which was established in 2016, contains the same protections for Scottish tenants as English tenants of pub companies with fewer than 500 pubs. Furthermore, it has recently been strengthened.
- At an exploratory meeting held in Edinburgh in November 2019, it was agreed that the next logical step due to the growing divergence in the Scottish pubs market in comparison to England & Wales, was to establish a Scottish Pub Governing Body to oversee the Scottish code and any arbitrations resulting from it.
- It was agreed with support of the Scottish Beer & Pub Association, Scottish Licensed Trade Association, UK Hospitality – Scotland and BII-Scotland. The first official meeting of the SPGB was scheduled for 7 May 2020 in Glasgow, however unfortunately needed to be postponed due to the pandemic. As part of the new SPGB, all panels and arbitrations will take place in Scotland at the

³ Page 21. <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/tied-pubs-scotland-bill/introduced/policy-memorandum-tied-pubs-scotland-bill.pdf>

⁴ The Scottish Pubs Code: <http://www.picaservice.com/wp-content/uploads/2016/11/Code-of-Practice-Scotland.pdf>

Scottish Arbitration Centre (unless another location is requested by the tenant). It is increasingly likely that online meetings could be held to further ease any burdens on operators.

- Companies signed up to the code commit themselves to implementing the regulations in the best possible way, and with full transparency for tenants. It includes pre-entry training and information to enable tenants to prepare an independent business plan with detailed terms of agreement between the landlord and tenant. It also includes a pre-tenancy checklist which must be completed at or prior to the final interview process.
- The Code further commits the companies to submissions of a satisfactory annual compliance report to the Scottish Pub Governing Body every year and numerous other elements they must comply with, including:
 - Abiding by its [the code's] terms and to act at all times in the spirit with which the Code has been compiled;
 - To act with integrity and honesty at all times and conduct business in a professional, fair and legal manner;
 - To be transparent about their terms of business and other dealings, particularly any charges made, or costs passed on, and the way in which rent has been assessed;
 - To offer contracts that are fair, reasonable and comply with all legal requirements; and
 - To deal with complaints speedily and fairly, in accordance with a clearly defined internal dispute mechanism and with access to independent dispute resolution, where appropriate, if such a mechanism fails to resolve the complaint.
- The Code also places obligations on tenants and operators to ensure that they are fully equipped to make informed commercial decisions. It includes requirements or recommendations for tenants and lessees to take independent professional advice. The Code also sets out a requirement for prospective tenants and lessees to undertake training to ensure that they fully understand the implications of a pub tenancy or lease.
- Also included within the Code is the ability of the tenant to easily access an independent, low cost dispute resolution system through the PICA-Service, and a similarly independent, low cost, and easily accessible rent review resolution service via PIRRS. Both services offer tenants and pub companies the opportunity to resolve disputes fairly, cheaply and quickly. Both PIRRS and PICA-Service have bespoke Scottish panels made of industry and tenant experts based in Scotland.
- With these protections already in place and a commitment by the signatories to continually review the code, we believe this shows clearly this legislative intervention is not needed.

- It is important to note that 3,200 tied pubs in England and Wales remain covered by a Voluntary code of practice and are not impacted by the 2016 Act.

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?

- No. The fundamental issues with the 2015 Act remain in this Bill ensuring the imposition of poor UK legislation into Scottish legislation. Where there are attempts to address some of the many problems, these are effectively passed to the Scottish Government to solve in its writing of the code which must be created within a year of the Bill being passed.
- For example, a major criticism of the 2015 Act is the time it takes from initial MRO requests to concluding new agreements. This Bill attempts to address this problem by allowing the Government to set a deadline within the code for offers to be made. This does not solve the issue but simply asks the Scottish Government to solve it within one year of the Bill's passing in writing the code.
- Even if a date is set within the code for an offer to be made, it would not solve the initial challenge that the full process – of requesting an MRO to starting a new agreement – could still take a prolonged period of time. The time-limit would only apply to the offer element, which is only a small part of what it is a detail-heavy, complicated process which naturally can take longer than desired to conclude. Indeed the debate around what constitutes an “MRO-agreement” under the statutory code in England & Wales continues four years on. This is a complicated area, fraught with unintended consequence as highlighted by a comprehensive Europe Economics⁵ report on the impact of the Code, undertaken to inform the current statutory review.
- Another criticism of the English & Welsh code is the lack of transparency, in that the financial information pertaining to the cases are not publicly available. Neil Bibby's Tied Pubs Bill does not address this issue either and in this instance, would also be impossible to solve due to the confidentiality and commercially sensitive data that making the information public would involve.
- The substantially lower budget which would be given to the Adjudicator in Scotland in comparison to the English and Welsh Adjudicator, would likely exacerbate these issues due to a simple lack of resources.
- Fundamentally, the same issues will remain but likely to a greater degree due to their impact on a very concentrated number of businesses. Any solutions to the problems will have to be worked out by the Scottish Government within a year of the Bill passing. We do not believe this is feasible, especially in the current climate.

⁵ Europe Economics report, available to download here: <http://beerandpub.com/wp-content/uploads/2019/07/EE-report-and-summary-1.zip>

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?

- We believe that the Bill and specifically the inclusion of MRO create fundamental barriers and obstacles for pub-owning companies which will a significant decrease in investment (as highlighted in our response to question 3).
- The inclusion of MRO will also incentivize pub-owning businesses to turn 'tied' premises into managed sites, by no longer offering leases on the premise and removing any threat to losing out on any investment. This is evident in England and Wales where there's been a sharp increase in the number of managed premises with one company directly turning around 150 pubs from tenanted directly into managed within the first year. During this time, just 17 MRO agreements were issued but the number of tied tenancies fell by 161.
- In fact, since the introduction of the legislation in England & Wales there are 4,657 fewer tied pubs, while the number of managed premises has increased by 927. The tied pub sector in England now makes up 40% of the total pubs (45% in 2015) while the managed sector has increased to 22% (only 18% in 2015). This has removed entrepreneurship opportunities for thousands of people in England and Wales and something which would likely be replicated with introduction of MRO in Scotland.
- The fact the Landlord & Tenant Act 1954 also does not apply in Scotland means that tenants have no legal right to renewal of a lease on its expiration, meaning that the attempted desire of this element of the Bill (to give tenants a MRO) simply doesn't work. Any potential solution to this problem would need to be solved by the Scottish Government in their drafting of the subsequent mandatory code.
- In incentivising pub-owning businesses to move away from the tied-partnership model, the Bill will result in fewer opportunities for small business owners and aspiring entrepreneurs. The tied-partnership models offers a low-cost entry to the market for aspiring entrepreneurs, especially young people who would otherwise find it difficult to own and run a business.
- This is illustrated by the fact that on average, it is ten times cheaper to start a tied-pub than buy one in the Independent Free Trade (£30k v £300k).
- Tied-Pub Partnerships enable self-employed tenants to successfully own and operate pub businesses with very little personal financial investment. Furthermore, they provide tenants with the flexibility, support and autonomy to develop unique and scalable businesses, and also the investment to assist in enhancing, modernising and diversifying their businesses as consumer habits evolve.
- Notwithstanding the profound impact of Covid-19 on the sector, the future success of Scotland's pubs is contingent on increased investment in existing

pubs alongside the opening of new pubs. Tied-Pub Partnerships are integral to this future success by playing an instrumental role in widening access to Scotland's beer and pub sector, which this Bill directly threatens. Pub companies would mitigate the risk by turning their premises into managed pubs and offering shorter-term leases.

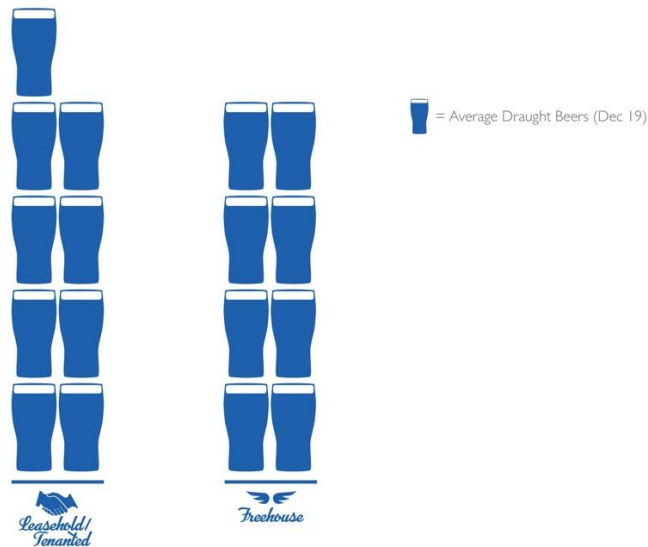
- Neil Bibby contends that the current Scottish Pubs Code should be replaced because it does not contain the MRO element, however if a tenant does not believe the dry rent is a fair one, and is not able to negotiate to their satisfaction, PIRRS provides a low-cost independent assessment that pub companies agree to be bound by. If a tenant wants to take on a free-of-tie pub, they also have greater opportunity in Scotland where the independent sector accounts for two-thirds of pubs.
- In fact, in light of the impact Covid-19 has had on our sector, pub-owning businesses have introduced a range of measures to support their tenants during the period of closure. These support measures have ranged from complete cancellation of rent to significant discounts, combined with deferrals of payment until pubs are trading again. This is in addition to support on other areas such as stock, maintenance, business advice, mental wellbeing checks and other special commercial or financial advantage (SCORFA) benefits. We believe that this constitutes a considerably greater level of support than a tenant would be receiving from either a commercial landlord if renting, or their bank if they owned the pub with a mortgage.
- Whilst the *best support* from the commercial landlord or bank may stretch to a mortgage holiday or rent deferral, the *bare minimum level of support* from a pub company is this PLUS a further discount on rent. We believe it is important that this is recognised and questions the motives of some who may suggest to you that our industry has not been providing sufficient support at this time.
- Furthermore, the vast majority of pub companies have committed themselves to reviewing rent once businesses reopen, as there is a common understanding that trading may be at a lower level, due to social distancing, and other virus mitigation measure that means pubs may require additional support in the form of reduced rent payments. This commitment comes on top of the cancellation of any built-in rent increases which had been due before the pandemic hit.

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 intention of a guest beer provision is admirable, however we believe the proposal as written is ill-thought-out and will have the opposite impact than intended. We believe this provision is aimed at encouraging more products from local, small breweries into pubs but this will not happen. Instead, the consequences of this would be a race-to-the-bottom on price, meaning larger,

multi-national brewers would be able to outprice smaller domestic brewers, crowding them out of the market.

- A race-to-the-bottom would occur as the vast majority of pubs would opt for lowest priced product out of economic necessity. Smaller and medium sized brewers would need to sell their products at a significant loss just to be able to compete with the larger companies. This is a step backwards when you consider that there is already a working-system to encourage local products into pubs.
- The Society of Independent Brewers Association's (SIBA) Beerflex provides tenants of tied-pubs the opportunity to source and sell locally-sourced cask ales and craft beer. This allows access to a broad range of Scottish beers and also helps to support independent Scottish brewers by providing routes to market.
- The scheme works by giving small independent breweries the ability to register their products, licensees of tied-pubs can they access these products via a purchase agreement between the pub-owning businesses and SIBA Beerflex. There will be different definitions of 'local', with some agreements covering beers brewed within 100/200 miles of the pub and some expanding that definition to anything within Scotland.
- The guest beer provision in this Bill would devalue the SIBA Beerflex by allowing non-independent breweries into the guest beer system. Thus, this would likely result in fewer not more local, domestic beers in Scottish pubs.
- Even for those businesses which don't operate Beerflex, there will be tailored solutions for individual tenants needs with regards to products normally stocked. The consumer now expects there to be a variety of products and beers, with a growing movement around localism. Pubs often need to have a local, craft beer in order to remain commercially attractive. Thus, pub-owning businesses have an interest and necessity in being able to supply these products to their tenants and will work to find ways to ensure they do.
- SBPA statistics also show that 40% of tied pubs are already completely free of tie on wine, spirits and soft drinks. This again raises the question of what this Bill will actually achieve and if there's any merit in legislation which will come at a cost to businesses, the consumer and the government.
- In addition, as highlighted in our response to question 1, freehouses, on average, have average less choice than those currently in tied-partnerships.



Img 4: Data provided by CGA

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.
- We believe that the cost estimates included within the Financial Memorandum drastically underestimate the financial assets needed to set-up and run a Pubs Code and Adjudicator.
 - As the Bill introduces fundamentally the same principles as the legislation in England and Wales, it would require much the same infrastructure. The initial Adjudicator setup costs amounted to £540K in England & Wales, more than double the estimate given in the Financial Memorandum for Scotland – more than five years later. The Financial Memorandum also only includes costs for ‘staff’, ‘office’, and ‘administrative costs’, omitting several items contained with the costs for England and Wales (below).

Table 3: Set up costs of the pubs adjudicator

	Estimated costs with 50% optimism bias	
	Estimated costs £000's to nearest 10k	£000's to nearest 10k
Staff and Recruitment	250	380
Accommodation	10	20
Services	20	30
Other	80	120
Total	360	540 ⁶

Table 4: Operating costs of the pubs adjudicator

	Low estimate	High estimate	Best estimate
	£000's	£000's	£000's
Arbitration	100	700	400
Investigations	50	750	300
Appeals	0	1600	400
Staff	320	580	470
Accommodation	20	30	20
Services	30	60	40
Other	90	180	120
Rounded Total	610	3890	1750

Pubs Statutory Code and Adjudicator, Impact Assessment (IA); Department for Business, Innovation and Skills (2014)

- Regardless of the true costs, it will be a significant amount of taxpayers' money being removed from the Scottish Government's budget at a time when budgets will be stretched more than they have ever been since the reopening of the Parliament in 1999.
- The economic fall-out from the pandemic will be felt by the world economy for some time to come and the focus of the Scottish Parliament and Government should be to prioritise public spending on the most-needed areas, while simultaneously boosting the economy through supportive measures for businesses. This Bill commits the Government to extra spending and introduces punitive measures on pub-owning businesses with regulations, which would be better prioritised in this current time.
- Furthermore, the cost and proposed levy will likely further incentivise pub-owning businesses to move their pubs from 'Tied' to 'Managed', meaning the ongoing costs year-on-year will gradually be shared by fewer and fewer pubs, further burdening both landlords and tenants.
- As well as the cost to setup the adjudicator and code, and the ongoing costs, the Bill will also create significant amount of work for civil servants and the government when they're writing the code. This will come at a financial and time cost to the Government at a time when we are still recovering from the fall-out of the pandemic. During this time, government will need to tackle a number of issues which have no obvious solutions and only one year to do so.
- The Bill creates these significant costs, but also only estimates to deal with "approximately 11 enquiries, 8 arbitration cases, and 23 MRO applications"⁶ every year. We do not believe this is justifiable and illustrates how the cost to set up and operate a Scottish Pubs Code Adjudicator is disproportionate to the minimal role it will play due to the limited number of pubs in scope.
- Any additional costs, such as the levy will also have to be met by someone, whilst the levy will apply to pub-owning businesses, the true cost will ultimately be passed on to the consumer in the form of higher prices.

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

⁶ Page 21. <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/tied-pubs-scotland-bill/introduced/policy-memorandum-tied-pubs-scotland-bill.pdf>

- The Bill creates a significant amount of work and cost for government, both financially and in resources, when numerous other matters are needed to be urgently. During the Covid-19 outbreak we have been encouraged by statements from politicians of all parties in their desire to support the industry on the road to recovery so that we can continue to have sizeable economic footprint on the national economy and support local communities by providing investment and jobs.
- Introducing this piece of legislation will not only do damage to the sector in ways we have set-out, but it will distract from support for the eight out of ten pubs, (near 4000) which this Bill has no interaction with whatsoever.
- In the Policy Memorandum for the Bill document, it also states that “*Neil Bibby believes that no meaningful and effective action has taken place since that time to address the challenges being faced by the tied pub sector in Scotland...*” We believe this to be factually inaccurate.
- Following the publication of the report in December 2016, then Minister Paul Wheelhouse MSP convened a roundtable of industry stakeholders in February 2017 to discuss the findings and pertinent issues for the trade. Neil Bibby MSP was invited to this meeting but did not attend, with a member of staff from his office attending in his place. It was resoundingly agreed at the meeting that the number one issue facing the trade was increasing cost pressures in the form of taxation and other regulatory burdens. It was also agreed that the efforts of government and parliament would be best placed in addressing these concerns and not adding additional red-tape and costs.
- Since then, pub-owning businesses have also established a series on industry initiatives in 2019 as detailed in our response to Question 2.
- We also believe that the consultation undertaken by Neil Bibby and used as support for this Bill was fundamentally flawed. The consultation resulted in only 29 tenants and workers responding to the short multiple-choice questionnaire. The consultation responses did not give any further empirical or convincing evidence to suggest that there were any issues which would be best addressed by primary legislation.
- In contrast, the Scottish Government’s study⁷ was evidence based and consisted of a balanced range across Independent Free Trade outlets (10), Fully Tied outlets (10), and Partially Tied outlets. As opposed to an online questionnaire, these 25 publicans who responded did so via 2-3 hour in-depth interviews. The average length of time running a pub from free trade respondents was 21 years, with tied publicans only a couple of years short of that.

⁷ Research on the Pub Sector in Scotland - Phase 1 'Scoping Study'; Business and Energy; The Scottish Government (2016) Available: <http://www.scottishbeerandpub.com/wp-content/uploads/2018/01/Scottish-Government-CGA-study.pdf>

- Despite opposing this piece of legislation, we appreciate Mr. Bibby's interest and attempt to improve the situation for pubs in Scotland but simply trying to replicate Westminster legislation which has proved unsuccessful in achieving its aims, and detrimental to investment in the pub sector will not help pubs in Scotland. To really improve the prospects for pubs, continue to ensure investment in the industry and reverse closures, we need to support pub-owning businesses, not burden them with additional regulations with no evidence of their requirement.