

T: 0300 244 4000
E: scottish.ministers@gov.scot

Gordon Lindhurst MSP
Convener
Economy, Energy and Fair Work Committee
Scottish Parliament

Via email:
economyenergyandfairwork@parliament.scot

21 January 2020

Dear Convener,

TIED PUBS (SCOTLAND) BILL – STAGE 1 REPORT

I am writing to provide the Scottish Government response to the Committee's Stage 1 Report on the Tied Pubs (Scotland) Bill and to your letter of 21 December on the Bill.

The Scottish Government is grateful to the Committee for its scrutiny of this Bill at Stage 1. A response to the specific conclusions and recommendations from the report can be found in the attached Annex. The response addresses several of the points raised in your letter.

As you know, I supported the Bill at Stage 1 on the basis that Stage 2 amendments are brought forward. The proposed amendments include: lengthening implementation and review timescales for the Pubs Code; removal of elements of retrospection so that past tenants cannot raise cases long after they or the pub-owning business have left the sector; enabling the Adjudicator, during investigations, to have regard to the actions of tenants as well as pub companies; and ensuring levies on pub companies are proportionate and Ministers are involved in determining levy rates. We are also continuing to examine the detail of the Bill, including legislative competence, which may give rise to further amendments.

The purpose of these amendments is to improve the Bill and ensure that it is proportionate and fair for both tenants and pub owning companies. The extension of the implementation period reflects the importance of getting the code right and also of proper consultation. As I have said to stakeholders, this does not mean that the process will necessarily take the full two years.

The purpose of extending the review periods is initially to allow the code to bed in and subsequently to avoid an almost constant process of review without space to let any arrangements run for a period of time before being subject to review.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

I think it is important that cases cannot be brought before the adjudicator long after a tenancy has ended, or in cases where the tenancy ended before the code came into effect. I have asked Mr Bibby for his thoughts on the timescale but imagine we may propose a 6 month cut-off period after the end of the relevant lease.

On levies, our aim is to ensure that any levy properly reflects the size of a business, to prevent smaller businesses being charged a disproportionate levy.

I am working collaboratively with the member in charge, Neil Bibby MSP, on these amendments. I am also engaging with various interested parties affected by the Bill.

The final bulletpoints towards the end of your letter of 21 December, i.e. issues highlighted by your members, are I think matters for Mr Bibby.

We are committed to supporting the pub sector in Scotland and I believe that this Bill, with some modifications, can contribute towards this aim. I look forward to working with Mr Bibby and the Committee during Stage 2.



JAMIE HEPBURN

Government response to the Committee's Report

Conclusion or recommendation	Government response
<p>Committee consideration</p> <p>“21. The Committee is grateful to all those who provided evidence which helped to inform its scrutiny of the Bill. The Committee notes that 2020 has been a particularly challenging year for the pub industry. We appreciate that people have continued to engage with the Committee's scrutiny of the Bill despite these challenges. Covid-19 has brought issues highlighted in the Bill into focus and the Committee acknowledges that any measures taken, legislative or otherwise, must be long-standing and offer the best solution both now and after the current restrictions ease.”</p>	<p>We support these views and the Tied Pubs (Scotland) Bill will form part of our longer-term approach to the sector.</p>
<p>Income for tied pub tenants</p> <p>“38. The Committee heard evidence from tenants who are trying to live on low incomes. The Committee believes that both the pub owner and the tenant should receive a fair financial return. The Committee received conflicting information on tenant income and felt that small sample sizes and dated information made much of evidence on income levels limited at best. The Committee would have hoped to receive full and transparent data which would have aided scrutiny. It may be that there is inconsistency between the income guaranteed by different pub-owning businesses, but insufficient information was provided by supporters of the bill and its opponents, to gain a full picture. The Committee suggests that independent analysis is needed in this area.”</p>	<p>We agree with the Committee that it has been challenging to form a view on the Bill because of the incomplete and polarised nature of the evidence provided.</p> <p>Government has no plans for further research at this stage. If the Bill is passed by Parliament, we will take account of the available information and evidence when developing the Scottish Pubs Code. This will include considering consultation responses received, as part of the consultation the Government intends to undertake, to develop the draft code.</p>
<p>Pub closures and tenant turnover</p> <p>“47. The Committee found the supporting data on pub closures, business failure and tenant tenure lacking. It is clear that pubs are closing, but the extent to which this can be attributed to problems with tied tenancy agreements was unclear. Further independent analysis of tenant tenure would</p>	<p>We agree with the Committee that it has been challenging to form a view on the Bill because of the incomplete and polarised nature of the evidence provided.</p> <p>Government has no plans for further research at this stage.</p>

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Conclusion or recommendation	Government response
<p>be useful in assessing how widespread an issue it is and to what extent the failure of tied tenancies contributes to the overall rate of pub closure in Scotland.”</p>	
<p>The Pubs code in England and Wales</p> <p>“55. The Committee notes that implementation of the Small Business, Enterprise and Employment Act has been considered problematic. The Policy Memorandum notes that the Bill has tried to avoid problems experienced in implementing the 2015 Act, but the outcome of the UK Government's review of the code has yet to be published, making it difficult to fully understand these issues or fulfil the Bill's aim of avoiding problems experienced in implementing the 2015 Act in England and Wales.</p> <p>56. The Committee notes the different operating landscape in Scotland, which also makes direct comparison with England and Wales challenging.”</p>	<p>We note these comments.</p> <p>The Committee will be aware that the UK Government's review of the code has now been published and is available at: Statutory Review of the Pubs Code and the Pubs Code Adjudicator: 2016-2019 (publishing.service.gov.uk)</p> <p>The Government has taken an interest in these developments and has used these to inform its approach to the Bill and development of the code, whilst recognising the different context and operating landscape in Scotland.</p>
<p>Threshold</p> <p>“66. The Committee believes that should the Bill progress, the issue of threshold should be further considered at Stage 2.”</p>	<p>The Government notes the Committee's views.</p> <p>The Government supports the Bill on the basis that it seeks to achieve fair and equitable treatment within commercial agreements. Any threshold would need to comply with this objective.</p>
<p>The Voluntary code in Scotland</p> <p>“77. The Committee found a lack of awareness of the voluntary code and suggest that more could be done to make tied pub tenants aware of existing measures, including mechanisms for arbitration. The Committee also notes that 6 out of 10 pub-owning businesses are currently signed up to the voluntary code and encourages the remaining 4 companies to also adhere to the code. The Committee recommends that the Scottish Government works with the pub industry and the Scottish Pubs Governing Body to better advertise the voluntary code in Scotland among tied-pub tenants if the Bill does not progress.”</p>	<p>We agree with the Committee that the lack of awareness of the voluntary code is concerning and this indicates it may not be working.</p> <p>If the Bill were to fall, then the Government could consider what actions might be undertaken in respect of the voluntary code, bearing in mind it is an industry code.</p>

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot



Conclusion or recommendation	Government response
<p>Appointment of the adjudicator</p> <p>“87. The Committee notes evidence that should the Bill progress, appointment of an impartial adjudicator is essential to the successful implementation of the Bill.”</p>	<p>We strongly support this conclusion by the Committee.</p>
<p>Court appeal process</p> <p>“91. Should the Bill progress, the Committee recommends that the appeal process is revisited at Stage 2.”</p>	<p>During his evidence at Stage 1, Mr Bibby agreed to consider the appeals process given the prospect of additional investment which may be required by the Scottish Courts and Tribunals Service to introduce a new process.</p> <p>We similarly support the appeals process being revisited and will review any amendment brought forward.</p>
<p>Arbitration</p> <p>“100. Several tenants raised issues regarding their contractual tied agreements through the Committee's survey, yet the Committee was surprised to learn that there have been no referrals to the PIRRS and PICA services for low-cost arbitration. The Committee believes that it is in both the tenant and the pub owners' best interests to minimise the turnover of tenants and encourage productive working relationships. The Committee therefore believes that the pub-owning companies must do more to make tenants aware of their options for dispute resolution.”</p>	<p>We note this point.</p> <p>If the Bill passes, we will take this point into consideration when developing the Scottish Pubs Code.</p>
<p>Views on the MRO option</p> <p>“116. The Committee notes that the Market Rent Only option is the most contentious aspect of the Bill in the eyes of witnesses who opposed it. On the other side of the argument, an overwhelming majority of respondents to the Committee's survey supported this proposal and considered it important in improving the situation for tenants.”</p>	<p>We note this point.</p> <p>The Financial Memorandum to the Bill identifies that the number of market only requests would be low. However, this provision could help improve the situation for the small numbers of tenants involved.</p>
<p>Guest beer agreement</p> <p>“129. There is consumer demand for craft beer and the Committee is supportive of measures which would help small independent brewers access a greater</p>	<p>We echo the Committee's sentiments in terms of supporting small independent brewers.</p>

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot



Conclusion or recommendation	Government response
<p>number of pubs and in turn support local production, jobs and economies. However, it is unclear to the Committee whether this would prevail from the guest beer agreement provisions as drafted.”</p>	
<p>Investment by pub-owning companies</p> <p>“138. The Committee felt that the arguments and investment figures presented on both sides were selective. The Committee believes that businesses desire profit and while profit can be made through tied tenancies, they will continue.”</p>	<p>We note this point.</p>
<p>Covid-19 investment</p> <p>“145. The Committee notes that Covid-19 has put enormous pressure on the pub industry; opening hours and pub capacity have been heavily curtailed, and periods of closure have led to months without sales or customers. Regardless of operating model, the Committee welcomes the measures that pub owners, tenants, managers and staff have taken to adhere to guidelines and make pubs as safe as possible.”</p>	<p>We support the Committee’s praise for the sector’s efforts to ensure safety during the pandemic.</p> <p>Government has provided significant financial support for businesses during this time.</p>
<p>Other forms of investment</p> <p>“162. The Committee notes that the Bill does not directly discuss investment, but the majority of witnesses suggested that investment by both pub owners and tenants would be impacted in some way. The Committee notes evidence that suggests continued investment in tied pubs in England and Wales despite the 2015 Act and wonders whether the gloomier predictions may have been overstated despite the likelihood of change, should the Bill progress.</p> <p>163. The Committee also notes that investment in repairs and maintenance of the pub was one of the main areas of friction between pub-owning businesses and tied tenants. On the one hand, the Committee heard that pub owners would be less likely to invest in tied pubs and their improvement if an MRO option was available to tenants, bringing uncertainty to the length of tenure in contracts. On the other, the Bill's</p>	<p>We note these points and are concerned at the potential for a loss of investment in the sector. We are keen to ensure the Bill is fair to both tenants and landlords and investment is not discouraged.</p>

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot



Conclusion or recommendation	Government response
<p>supporters said that there would be greater opportunities for tenants to invest themselves or to negotiate improved terms for investment by the pub owners. Again, the polarised nature of the debate, and lack of recent and reliable data, has made the Committee's consideration of the issues raised by the Bill difficult.”</p>	
<p>Financial Memorandum</p> <p>“173. The Committee notes that there are differing views on the likely workload for the Pubs Code Adjudicator, and therefore also the overall set-up and running costs outlined in the Financial Memorandum.”</p>	<p>We note this point. If passed, the Scottish Government, would seek to keep costs, within the Government’s gift as low as possible.</p>
<p>Conclusions</p> <p>“174. The Committee believes that pubs perform an important role in Scotland's communities and make significant contributions to the Scottish economy. It is important that customers have choice in the establishments they visit and the products they buy. Pub owners and those managing and operating pubs should feel that tied-pub arrangements are mutually beneficial.</p> <p>175. The Committee believes that both the pub-owner and tenant should get a fair return and some of the income levels cited by tenants seemed very low. However, in the absence of independent analysis, members felt that small sample sizes and dated information made much of the evidence limited. It was difficult for the Committee to assess the range of income being received by different tenants and how this related to the pubs overall profits. The Committee would have found it helpful to have more information on this point.</p> <p>176. A majority of the Committee remained frustrated by the polarised arguments and the lack of complete, robust and independent data upon which to evaluate the potential impact of the proposed Bill on pub owners and tenants. That majority were unconvinced that sufficient evidence was presented to the Committee to suggest that the problems described were large-scale or</p>	<p>We agree with the Committee that it has been challenging to form a view on the Bill because of the nature of the evidence provided.</p> <p>The Government carefully considered the Committee’s report and noted their conclusions on the principles of the Bill.</p> <p>In addition to the evidence to the Committee, the Government has taken into account the experiences of stakeholders and developments like the UK Government review and the Heineken case.</p> <p>The Government has decided to support this Bill, with amendments, on the basis that improvements are needed in this field and that the legislation, on balance, is required,</p> <p>I will continue to work with the member in charge and the Committee on further amendments and look forward to the discussion at Stage 2.</p>

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot



Conclusion or recommendation	Government response
<p>that there were adequate grounds to warrant legislative interference in contractual agreements.</p> <p>177. However, a minority of the Committee agrees that there is an imbalance in the relationship between pub tenants and landlords and that the provisions in the Bill would help to ensure a fairer balance of risk and reward. They note that the Bill is supported by the majority of those who responded to the Committee's call for evidence, in particular a broad coalition of workers, tenants, and consumers. The establishment of a statutory code, an independent adjudicator and a market only rent option are welcome and overdue measures.</p> <p>178. The Committee, whilst commending the intent behind the Bill, is not agreed that legislation is required, and does not support the general principles of the Bill."</p>	

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



INVESTORS
IN PEOPLE

Accredited
Until 2020

