

TIED PUBS (CODE AND ADJUDICATOR) (SCOTLAND) BILL

NEIL BIBBY MSP

SUMMARY OF CONSULTATION RESPONSES

This document summarises and analyses the responses to a consultation exercise carried out on the above proposal.

The background to the proposal is set out in section 1, while section 2 gives an overview of the results. A detailed analysis of the responses to the consultation questions is given in section 3. These three sections have been prepared by the Scottish Parliament's Non-Government Bills Unit (NGBU). Section 4 has been prepared by Neil Bibby MSP and includes his commentary on the results of the consultation.

Where respondents have requested that certain information be treated as confidential, or that the response remain anonymous, these requests have been respected in this summary.

In some places, the summary includes quantitative data about responses, including numbers and proportions of respondents who have indicated support for, or opposition to, the proposal (or particular aspects of it). In interpreting this data, it should be borne in mind that respondents are self-selecting and it should not be assumed that their individual or collective views are representative of wider stakeholder or public opinion. The principal aim of the document is to identify the main points made by respondents, giving weight in particular to those supported by arguments and evidence and those from respondents with relevant experience and expertise. A consultation is not an opinion poll, and the best arguments may not be those that obtain majority support.

All publishable responses can be seen on the website www.protectourpubs.scot which displays each response with a sequential number, Smart Survey identification (ID) number (automatically assigned by Smart Survey) and the name or status of every response, for ease of reference. A list of responses attributable to organisations and individuals can be found at the Annexe.

SECTION 1: INTRODUCTION AND BACKGROUND

Neil Bibby's draft proposal, lodged on 16 February 2017, is for a Bill to establish a Pubs Code in Scotland to govern the relationship between tenants of tied pubs and their owners, and an Adjudicator to enforce the Code

The proposal was accompanied by a consultation document, prepared with the assistance of NGBU. The consultation exercise was run by Neil Bibby's parliamentary office. The consultation period ran from 20 February 2017 to 31 July 2017 (the original closing date of 20 June 2017 was extended on 3 May 2017 due to the calling of a UK General Election) and the consultation document was published on the Parliament's website, from where it remains accessible:

<http://www.parliament.scot/parliamentarybusiness/Bills/12419.aspx>.

The consultation document was sent to publicans across Scotland and also handed out to producers and attendees at the Campaign for Real Ale (CAMRA) Real Ale Festivals which the member attended in Paisley, Glasgow and Edinburgh.

The member also met with organisations and individuals throughout the consultation process, including—

- Scottish Licensed Trade Association (SLTA);
- The Campaign for Real Ale (CAMRA);
- current and former tied pub tenants across the country;
- representatives from producers in the Scottish Brewing Sector;
- the pub company¹ Punch Taverns; and
- Paul Wheelhouse MSP, the Minister for Business, Innovation and Energy.

The consultation process is part of the procedure that MSPs must follow in order to obtain the right to introduce a Member's Bill. Further information about the procedure can be found in the Parliament's standing orders (see Rule 9.14) and in the *Guidance on Public Bills*, both of which are available on the Parliament's website:

- Standing orders (Chapter 9):
<http://www.scottish.parliament.uk/parliamentarybusiness/26514.aspx>.
- Guidance (Part 3):
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25690.aspx>.

¹ Companies that own multiple pubs, including where there is a "tied" arrangement between the company and the individual landlord, are commonly known as "Pubcos".

SECTION 2: OVERVIEW OF RESPONSES

In total, 275 responses were received, many of which were submitted via “Smart Survey” (an online survey which allows responses to be completed and submitted online). Some were sent in by email or in hard copy.

Responses from organisations

Forty-six responses were received from organisations as follows—

- one from a public sector body (West Dunbartonshire Licensing Board);
- 35 from commercial organisations (a number of these responses were from pubs or pub companies);
- eight from representative organisations (trade union, professional association); and
- two from the third sector (the Campaign for Real Ale (CAMRA), and the Huddersfield branch of CAMRA).

A large majority of organisations, 36 (78% of those who responded) were supportive of the proposal (33, 71%, were fully supportive, and three, 7%, were partially supportive). Fully supportive organisations included individual pubs and bars, breweries and drinks companies, Trade Unions (GMB and the STUC), a political party (Scottish Co-operative Party), trade, membership and representative bodies (the Federation of Small Businesses, Scottish Licenced Trade Association, CAMRA, Scottish Tourism Alliance) and one local authority licensing board.

Nine organisations, 20% of those organisations that responded, were opposed (eight, 18%, were fully opposed, and one, 2%, were partially opposed). The fully opposed organisations included the Scottish Beer and Pub Association (which represents breweries and pub companies in Scotland), several of its Pubco members (Punch Taverns, Greene King plc, Admiral Taverns, Heineken UK, and Hawthorn Leisure Ltd). The Scottish Property Federation was partially opposed.

One organisation, Coadys Bar, was neutral.

Thirty-two responses from organisations, 70% of those who responded, were content for their response to be attributed to them. Twelve, 26%, requested anonymity, and two, 4%, asked for the response to be confidential.

Responses from individuals

Two hundred and twenty-nine responses were from individuals of which—

- 17 were from individual politicians (13 MSPs; one MEP; and three councillors);
- 22 were from professionals with experience in a relevant subject;
- four were from academics with expertise in a relevant subject;

- 29 were from current or former pub tenants or workers (this category was added to the consultation on 26 April 2017, by which time there had been 37 responses, so this may not capture all those in this category); and
- 157 were from members of the public.

Late and other responses

There were two late responses from—

- the Law Society of Scotland; and
- Jackie Baillie MSP.

These two responses have not been included in the analysis below, but are available on the member's website.

The response from CAMRA included a petition with details of supporters taken at the Paisley Beer Festival. The STUC Congress informed Neil Bibby that it supported the proposal and endorsed the response to the consultation made by the GMB union.

Organised response campaigns

Campaigns of support for the proposal were conducted by three organisations as follows—

- CAMRA asked members to email Neil Bibby in support of the proposal, and 172 such emails were received;
- the Scottish Licenced Trade Association (SLTA) asked members to sign a standard wording of support and send these to Neil Bibby, and 49 such responses were received; and
- the GMB Trade Union ran a postcard campaign and 109 postcards expressing support for the proposal were received.

This summary only provides analysis of the responses made to the consultation document questions, whether via Smart Survey or by email or hard copy. People who indicated support for one of the campaigns but did not actually respond to the consultation directly are not counted amongst the data in this summary.

Status of responses

Of the total responses received—

- 143 (52%) were content for the response to be attributed to the respondent;
- 115 (42%) asked to be anonymous; and
- 17 (6%) asked for their responses to be treated as confidential.

The relatively high number of un-attributable responses can perhaps be explained by the relevance of the consultation to landlord/tenant contracts and relationships.

Executive summary of responses

An overwhelming majority of responses (257, 93%) were supportive of the proposal (240, 87%, fully supportive and 17, 6% partially supportive). Many of the comments made in support of the proposal reiterated arguments made in the consultation paper, including that introducing a tied pubs code and adjudicator in Scotland would: help to ensure a fairer and more appropriate balance of power in the relationship between Pubcos and tenants; improve and protect tenants' rights; improve tenants' ability to make a successful living from the business; lead to cheaper and more appropriate rents; and enable tenants to buy stock more cheaply and sell a wider range of products (which would widen consumer choice and boost Scottish businesses).

A very small minority of respondents (14 respondents, 5%) were opposed to the proposal (12 respondents, 4%, were fully opposed, and two, 1%, were partially opposed). The majority of these responses came from Pubcos and their representative body. Reasons given for opposition included that: the tied arrangement is mutually beneficial to tenants and landlords; the current range of management options, including tied arrangements, are sufficiently flexible and appropriate to allow businesses to succeed; the proposal would introduce unnecessary and unhelpful complexity; the proposal would significantly increase costs for all involved; it would remove valuable investment in the industry provided by Pubcos; and that there is a sufficient and effective voluntary code in Scotland.

The summary below of responses to each question in the consultation paper provides a more detailed summary.

Disclaimer

Note that the inclusion of a claim or argument made by a respondent in this summary should not be interpreted as verification of the claim or as endorsement of the argument by the Non-Government Bills Unit.

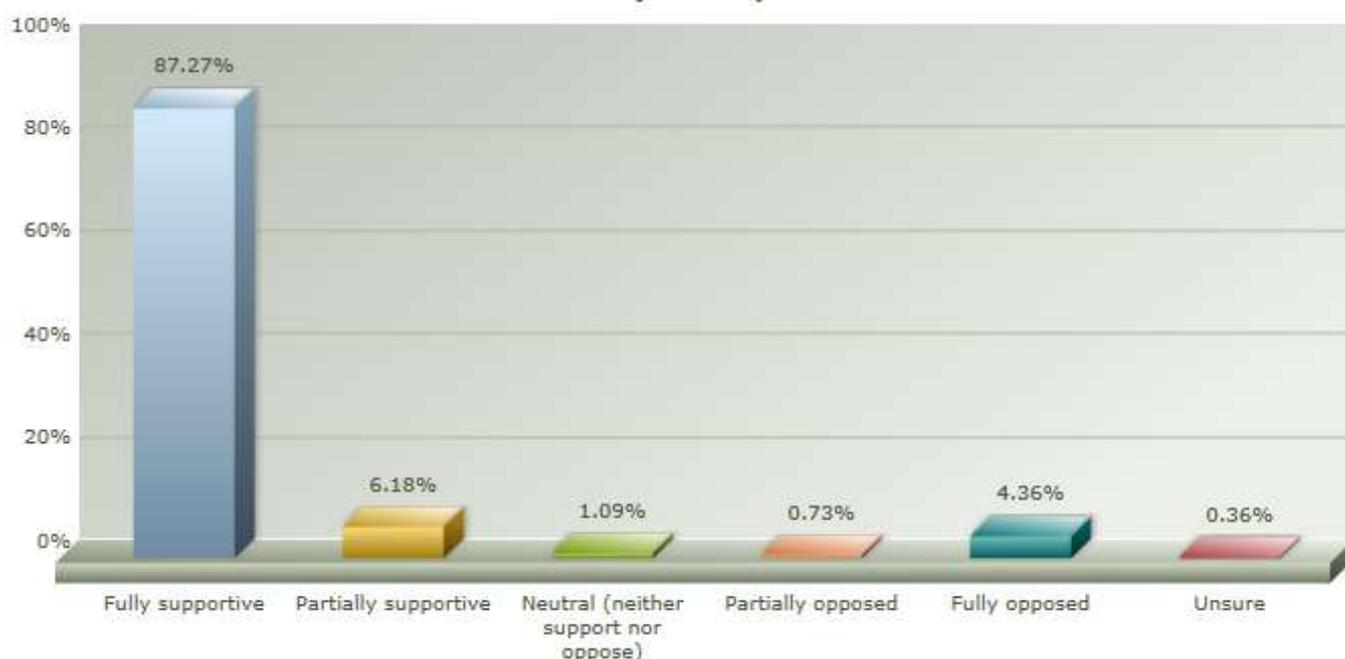
SECTION 3: RESPONSES TO CONSULTATION QUESTIONS

This section sets out an overview of responses to each question in the consultation document.

Overall view of the proposal – Question 1

All two hundred and seventy-five respondents answered this question as follows—

1. Which of the following best expresses your view of establishing a statutory Scottish Pubs Code and Scottish Pubs Code Adjudicator? Please explain the reasons for your response.



Reasons for supporting the proposed Bill

An overwhelming majority of responses (257, 93%) were supportive of the proposal (240, 87%, fully supportive and 17, 6% partially supportive).

Reasons for full support

Reasons given for fully supporting the proposal included that—

- the freedom and rights of tied pub tenants should be protected;
- Pubcos in Scotland are currently unregulated;
- the law in Scotland, and therefore the rights of tied pub tenants, should be consistent with the law in England and Wales;
- it would help make tied pubs more profitable and competitive and put all pubs on a level playing field;
- it would improve choice for consumers;
- it would boost the independent pub sector and help Scottish products;
- pubs are an important part of some communities;
- it would redress the currently uneven balance of power between Pubcos and tenants;

- it would reduce costs for tenants, including rents and products, and give them more choice;
- it would help to make the end of tenancy process fairer;
- it would reduce the burden on taxpayers who currently subsidise some tenants while Pubcos make large profits (i.e. it is in the public interest);
- it would improve transparency of the sector;
- it would help avoid high turnover of tenants;
- it would reduce the incentive for operators to cut corners to maximise profits;
- it would save pubs and jobs; and
- it would help improve the choice in pubs thus tackling the issue of people drinking more at home.

The Scottish Licensed Trade Association fully supported the proposal in principle, but stressed that: “The Code must be detailed, universal and comprehensive to avoid misinterpretations.” In its submission it set out the difficulties and challenges facing the pub sector in Scotland and the problems it believed are caused by tied tenancies, noting the following statistics—

- Based on performance over the previous two years, tenanted pubs across Scotland were sixty-two times more likely to close than their free trade counterparts;
- 74% of Scottish publicans felt worse off as a result of the tie, and more than 96% believed that paying a reduced rent didn’t fully take into consideration the extra cost they would bear on tied products and services;
- 99% of publicans wanted the same level of protection as their counterparts in England and Wales; and
- 97% of tenants believe that the reduced rents do not offset the increased prices they pay for beer etc.

Viability of tied pubs

Many supportive responses came from current or former pub tenants. Many of these responses gave personal accounts of the negative effect their tied arrangement was having on the viability of their businesses. One tenant of the Punch Taverns group gave detailed negative personal experience of being a tied tenant, stating—

“When we reviewed year one, even though we had trebled the takings, we were lucky to break even and I would have to take a wage cut of £5000. The problem was clear that I was paying grossly over-inflated prices [compared with the prices] that I would be paying on the open market, in some cases over 100% more. For beer alone we worked out that I was being charged over £80,000 more per annum from Punch. To make the business sustainable I would have to go back to the negotiating table and I would have to let 2 members of staff go. I ended up doing between 70 and 80 hours per week for my £15,000 a year which works out at approx £145 a week.”

The response from CAMRA set out its views on the economic impact that tied leases can have on tenants—

“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, a 2014 study commissioned by CAMRA about the tied pub sector in Scotland found that 96.5% of tied respondents believed that paying a reduced rent did not fully take into 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. 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.”

West Dunbartonshire Licensing Board was the only local authority to respond to the consultation, and was fully supportive. It stated that, anecdotally, it was aware of issues in the tied sector which may affect the long term viability of premises and the ability of tenants to make a living. It noted concern that this results in a high turnover of tenants and a potential temptation to cut corners in order to make a profit.

Impact on Scottish jobs, economy and businesses

The Scottish Tourism Alliance stated that the tied agreement causes difficulties which can lead to pub closures which are bad for tourists. The GMB Trade Union stated that tied arrangements reduce opportunities for locally produced products to be sold, limiting job opportunities. Tennent Caledonian Breweries was fully supportive of the proposal. The brewery is owned by the C&C Group, owners of the Tennent's Lager brand, and the cider brands Bulmers and Magners. Its response stated that: the beer tie is unfair to tenants and takes money out of the Scottish economy; tied pubs are more likely to close; and that the tie restricts access to Scottish brands and brewers. The Federation of Small Businesses was also fully supportive, stating the proposal would lead to a “win-win” for tenants and customers due to tenants being able to earn more, thus invest more in their businesses, giving customers the benefit of lower prices and a wider product range, including craft beers from microbreweries.

Level playing-field with England and Wales

Many respondents referred to the recent legislation on this issue in England and Wales, which has established a code and adjudicator for tied pub companies which operate 500 tied pubs or more, and their tenants, and stated that it was not fair or justifiable that tied tenants in Scotland did not have the same rights. The Scottish Licensed Trade Association stated that this has left Scottish tied tenants in a vulnerable position and that similar legislation was needed to ensure tied tenants in Scotland enjoyed the same rights and were no worse off than free-of-tie tenants.

Access to dispute resolution

Many respondents thought that the introduction of a code and adjudicator would give tenants easier access to dispute resolution mechanisms. One pub tenant, Chris Reid, explained that his Pubco, Greene King, offered access to the Pub Independent Conciliation and Arbitration Service (PICAS), with regard to rent review and disputes and also offered support from the Royal Institute of Chartered Surveyors (RICS) and Pubs Independent Rent Review Scheme (PIRRS). However, he noted that this was not legally binding or available to all tenants of Pubcos in Scotland, and stated—

“... my business will always be in a poorer position than businesses which are free of tie and open to the possibility of exploitation by unscrupulous Pubco landlords.”

Rent

Many respondents predicted that rents would fall if the proposal was implemented. However, some cautioned that any bill must protect against Pubcos increasing rents to compensate for any loss of income elsewhere. This was acknowledged by the FSB which stated that it had carried out a number of telephone interviews with small business owners to develop a deeper understanding of the tied pub sector and that the fear of rent increases was a key theme of those discussions. According to the FSB, one tenant said he had been told by his Pubco that if he left the tie arrangement his rent would double.

Reasons for partial support

Seventeen respondents were partially supportive of the proposal. Reasons given for partial, rather than full, support included—

- the need to be careful not to impose too many restrictions;
- that pubs are a community resource and should be state funded;
- concerns that rent and other costs would be increased by Pubcos to compensate for loss of income; and
- that the proposal must be self-funding.

One organisation, The Cardwell Inn, explained—

“Only partially supportive as at the moment there seem to be too many unknowns. What will be a free market rent for my pub? What will be the cost of operating the scheme? How will that be funded?”

Another, anonymous, partially-supportive respondent (ID 60236741) was concerned about potential unintended consequences of the proposal due to the “Scottish system of leasehold and the lack of security of tenure beyond the term of the lease”.

Reasons for opposing the proposed Bill

Fourteen responses (5% of those who answered the question) were opposed to the proposal (12, 4%, were fully opposed and two respondents, 1%, were

partially opposed). The fully-opposed responses included the pub company representative body (the Scottish Beer and Pub Association (SBPA)) and several large Pubcos (Hawthorn Leisure, Punch, Greene King, Admiral and Heineken). Of the two partially-opposed responses, one was anonymous and the other was from the Scottish Property Federation. Reasons given for fully opposing the proposal included that—

- the tied pub model can work well and offers an entry point for those who cannot afford to buy free of tie premises;
- it will deter people from using the tenanted model;
- it will encourage the various property companies that are acquiring pubs, to the detriment of the sector;
- it will encourage loan contract arrangements between big brand breweries and non-tied tenants which will limit choice for consumers;
- it ignores the investment that Pubcos make in tied pubs, the loss of which will force tenants to borrow from the breweries;
- more research is required into the potential effects of the proposal on both landlords and tenants and the differences between English and Scots law in this area;
- Market Rent Only contracts favour landlords rather than tenants;
- the Scottish Government commissioned research into the pub sector in Scotland recently which concluded that no part of it was unfairly disadvantaged;
- there is a new Voluntary Code in Scotland which Pubcos are signed up to and time should be allowed to assess the impact of that and the impact of the 2015 legislation in England and Wales;
- the Parliament should focus on proposals that would positively affect more of the small businesses in Scotland than only tied pubs;
- publicans in Scotland already have much greater flexibility as to what arrangement will suit them best compared to England and Wales;
- the tied model can provide many additional benefits, such as subsidised training, marketing support, social media support, provision of website, food development support, and compliance reviews (many pubs would fail without this support);
- there is only one dominant player in Scotland – Punch Taverns with 27% of tied pubs, which could increase to 40% if a Heineken takeover goes ahead – and any measures should be targeted at them;
- both parties are free to enter the arrangement or not so it is not appropriate for state interference in a contract between two parties;
- tied arrangements see landlords and tenants sharing risks and rewards; and
- it will lead to pub closures and therefore not have the desired effect of ensuring communities have adequate and proper access to pubs.

The SBPA² stated that it and its members were fully opposed to the proposal. In its view, there was no justification for a code or adjudicator in Scotland, and

² According to its submission, the SBPA is the trade body representing breweries and pub operating companies in Scotland. Together with its sister organisation the British Beer & Pub Association, its members account for over 90% of UK beer sales and own around 20,000

the tied pub model had various advantages to it, such as the access to pub businesses and the support and investment provided by the Pubcos. It believed that tied tenants were best protected and supported by its voluntary code, which offered the same protection as tenants of Pubcos with fewer than 500 tied pubs have in England and Wales. It noted that the statutory system now in place in England and Wales for tenants of Pubcos which own 500 or more tied pubs had experienced many difficulties and would not be appropriate for Scottish circumstances. It also noted that the proposal had not given sufficient weight to the recent research commissioned by the Scottish Government and which had not suggested that any part of the pub sector in Scotland was unfairly disadvantaged.

The SBPA said it did not recognise parts of the data (on page 12 of the consultation document and credited to the SBPA) regarding the number of tied pubs in Scotland, and also stated that other data presented in the consultation document was misleading. It concluded by stating—

“We would also highlight that over the many years the tied model has been looked at from a UK perspective, when asked to investigate the Office of Fair Trading (or equivalent body) has each time concluded the tie does not detriment the consumer. This is strictly a business to business issue. If there is no consumer detriment, then we would question given the small number of tied pubs in Scotland, with – as we highlight – no real evidence of either consumer harm or litany of complaints from licensees, then this is not an effective use of Scottish parliament time – especially when the SG has already committed resource and time to a major study which has not identified any specific harm within a specific part of the Scottish pub sector.”

All of these arguments against the proposal were supported in the responses by the large Pubcos and those arguments are not repeated here (please see individual responses for views). However, some Pubcos commented on their own experiences of tenant relationships and the success of the tied pub model, and on the benefit they thought the proposal may bring to large breweries and drinks manufacturers, rather than tenants. An individual respondent, Stuart Ross, who was former CEO of the Belhaven Group, twice President of the SBPA, former Chairman of the SLTA, and former President of the Benevolent Society of the Scottish Licensed Trade, gave detailed reasoning for his opposition to the proposal which covered many of the points listed above. He commented on the differences between English and Scots law relating to landlords and tenants, stating that further research is required on this issue. He said that “historically English lessees and tenants have had greater rights of security of tenure than their Scottish counterparts.” He added that most tenanted pubs in England have accommodation while most in Scotland do not, therefore Scottish tenants on shorter contracts, or who do not wish to renew contracts, do not face upheavals such as finding new homes and schools for children etc.

pubs. Several of its members (e.g. Heineken, Punch Taverns, Hawthorn Leisure, G1 Group and Admiral Taverns) operate tied tenancies in Scotland.

Tenant relationships and tied model successes

Some of the Pubcos commented on their experiences of relationships with tenants and the success of their tied contracts. One Pubco, Hawthorn Leisure Ltd, which manages 69 tied pubs in Scotland (as well as pubs with other management arrangements), stated that it generally has very positive relationships with its tenants, with very few disputes. Where disputes do occur it states that these are resolved directly with tenants, and also notes that it is a signatory to the voluntary code in Scotland and committed to PIRRS and PICAS. It also noted its membership of professional organisations such as the British Beer and Pub Association (BBPA), the Scottish Beer and Pub Association (SBPA) and the British Institute of Innkeeping (BII). Punch Taverns noted that tied pubs are actually less likely to close than other types of pubs, citing data from the company CGA Strategy³ as evidence.

Greene King, another of the fully-opposed large Pubcos, stated that it operates tied agreements which it described as “flexible, transparent and competitive”. It stated that the tied model was only one of many available options for prospective tenants, and was a popular one, stating that it had not seen the levels of discontent referred to in the consultation document. It noted that PIRRS and PICA had received no formal complaints from tied tenants regarding their tenancy. It therefore argued that the proposal was unnecessary.

Benefit to brewers not tenants

Some Pubcos highlighted that the proposal would not benefit tenants, but rather would benefit large brewers and drinks manufacturers. Punch Taverns stated that tied brewery loans would replace bank lending to pubs, which oblige pubs to buy beer from the lender brewery, adding “It is no surprise to us that the biggest corporate supporters of MRO [Market Rent Only] are also Scotland’s biggest tied brewery loan provider.” Stuart Ross also commented on this, stating that the proposal takes no account of loan arrangements with drinks manufacturers, which are more common in Scotland than in England. He stated that the proposal would cause a growth of such loan contracts which would restrict consumer choice and that Neil Bibby must address the issue going forward.

Greene King highlighted the issue of the C&C Group (owner of Tennent Caledonian), stating—

“Multiple operators face an additional challenge in Scotland due to the dominance of brands manufactured and distributed by C&C, including Tennent’s lager. The market power of the C&C group in Scotland, through Tennent’s, presents a significant challenge to retailers who ensure a route to market for their products through their tied estate. The loss of this route to market would risk a significant downturn in the diversity of brands available in Scotland and restrict consumer choice.”

³ CGA Strategy is a market measurement, data and research consultancy specialising in the food and drink sector.

Reasons for partial opposition

Two respondents (the Scottish Property Federation and an anonymous respondent) were partially opposed to the proposal. The anonymous respondent (ID 60225674) saw merit in the tied pub model but also was not opposed to an adjudicator in principle. However, they stated that the England and Wales Act had had many problems and there could be negative consequences in Scotland, such as small Pubcos going out of business and larger Pubcos taking on a bigger share of the market, restricting competition. The Scottish Property Federation believed that the proposal was unnecessary and could have negative consequences for the pub industry, adding if it went forward Scottish based market research on the impacts, which is missing from the consultation document, is urgently required.

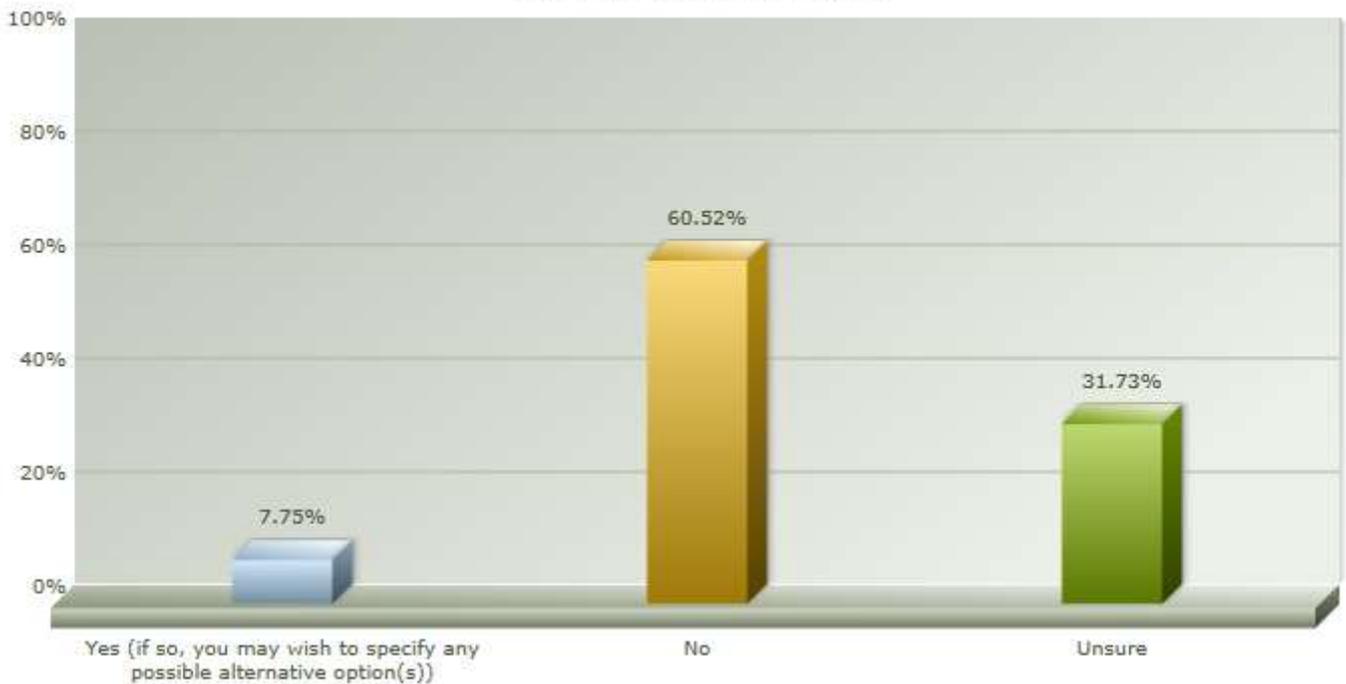
Neutral responses

Three respondents were neutral on the proposal, neither supporting nor opposing it. One anonymous individual (ID 59868357) stated that the industry would continue to decline regardless of this proposal because of the cheaper price of drinks in supermarkets which had led to people drinking more at home, or not drinking at all.

Alternatives to a Bill – Question 2

Two hundred and seventy-one respondents answered this question as follows—

2. Could the aims of this proposal be better delivered in another way (without a Bill in the Scottish Parliament)?



Those who thought the aims could not be better delivered in another way

A majority of responses (164 respondents, 61%) thought that the aims could not be better delivered in another way. This was almost entirely made up of those supporting the proposal. Reasons given included that—

- voluntary measures are often not effective without legislative enforcement;
- not all pub companies are signed up to the voluntary measures;
- the voluntary measures are operated by the Pubcos;
- there are no incentives for Pubcos to deliver the required changes on their own;
- legislation was considered necessary in England and Wales and Scottish tenants face the same issues; and
- challenging big businesses is very difficult for tenants without statutory support.

A number of responses, however, stressed that lessons must be learned from the difficulties faced by the legislation in England and Wales to ensure Scottish legislation was appropriate and effective, and that the adjudicator must be independent and respected by all, with no previous links to Pubcos. The SLTA stated it was not right that there was a statutory code, adjudicator and protections for tenants in England and Wales, but only a voluntary code in Scotland, when the relationship between Pubcos and tenants was a UK wide matter. It noted that the voluntary code was produced by the SBPA which represented Pubcos, not tenants, and was similar to that used in England and Wales before the legislation was deemed necessary, noting that “tenants with valid concerns either have no awareness of the self-regulatory system or little confidence in it.”

And the GMB Union noted that having a different statutory status for tied pubs across the UK could make the Scottish sector vulnerable, stating that “without a levelling of the playing field it is inevitable that Pubcos will target what they see as a weaker regulatory environment in Scotland.”

Those who thought the aims could be better delivered in another way

A small minority of respondents (21, 8% of those who responded to the question) thought that the aims could be better delivered in another way. This was almost evenly split between those who supported the proposal, and those who opposed it, with one neutral respondent also of this view. Suggested alternative ways of delivering the aims included—

- by using the same code as England and Wales;
- by consultation between the parties involved;
- by adhering to the voluntary code in Scotland and giving that more time to settle in;
- by resolving disputes, as at present, directly with tenants;

- by funding support for small businesses and helping them to grow rather than increasing red-tape for larger investing businesses;
- by Pubcos allowing tied tenants to buy products at market rate;
- by banning tied pub tenancy agreements altogether; and
- by establishing a union for bar staff.

The SBPA was firmly of the view that the proposal is unnecessary on the grounds that the current voluntary code provides (in its view) sufficient and appropriate protection to tied pub tenants. This view was supported by the large Pubcos which responded. Greene King stated that its obligations under the voluntary code ensure that the types of tenancy agreements outlined in the proposal are already made available to tenants, which includes flexibility to purchase regional beers and Scottish spirits within the terms of the tie. It adds that other key aspects of the England and Wales legislation, the Market Rent Only (MRO) option and referring disputes to an adjudicator, are also covered by the voluntary code via requirements to offer assistance to tenants in certain circumstances and the provision of PIRRS and the PICA service for independent dispute resolution. It noted that—

“This comprehensive system of governance requirements and independent arbitration currently deliver the stated aims of this proposal without the need for legislative action.”

The Pubs Advisory Service, which was fully supportive of the proposal overall, stated that MRO could be given to all by “Deed of Variation on demand” which it stated would “cut through the red tape” as well as being self-policing as “if a tenant is being abused by their landlord they can take action and sever the relationship, if they [are] happy with relationship and with that any "benefits" that come with being tied, they can stay tied.” The Scottish Property Federation, which was partially opposed to the proposal, said issues could be addressed by “improving tenants’ uptake of legal and professional advice before lease agreements are finalised” and by allowing the market to continue to be self-adjusting.

Those who were unsure

Almost a third of those who answered this question (86 respondents, 32%) were unsure as to whether the proposal could be better delivered in another way. However, only 25 respondents gave any reasons for their answer. Reasons given included that—

- respondents did not feel sufficiently knowledgeable/experienced to comment;
- the voluntary system may work, but other voluntary measures are often ineffective;
- the effects of the legislation in England and Wales need to be better understood and analysed before anything is done in Scotland;
- a quicker solution may be required;
- legislation can often have negative or unhelpful consequences;

- the legislation in England and Wales should be extended to Scotland; and
- views on the merits of any legislation would depend on its specific content and how it was implemented.

Stuart Ross, who was fully opposed to the proposal, stated he had “no real issue” with a statutory code “providing that the substance, implementation and control of the Code are properly articulated and communicated and that the MRO option is excluded” adding that “a voluntary code would I think be better but I appreciate the difficulty in getting commitment to it across-the-board.”

One anonymous respondent (ID 60225674) stated that whilst regulation to restrict the ability of large companies to take advantage of individuals was a good thing, the proposed bill seemed like regulation for regulation’s sake, noting that they were only aware of eight pubs taking advantage of the MRO provisions in England and Wales in the first year of the process. They added “ensuring Pubcos are regulated to ensure they fulfil their responsibilities prior to signing up a tenant seems a far better option.”

Advantages and disadvantages of the proposal

Question 3: What do you think would be the main advantages, if any, of establishing a statutory Scottish Pubs Code and Adjudicator?

Two hundred and forty-eight respondents answered this question and many of the advantages noted repeated those given by those who supported the proposal when answering question 1. Other respondents were opposed to the proposal and answered by stating there were no advantages or by listing disadvantages.

Where advantages were given, they included that the proposal would—

- give tenants a voice and hold Pubcos to account;
- provide an easy way to bring/resolve disputes;
- ensure tied tenants are no worse off than those free of tie;
- lead to fairer rents and product prices for tenants;
- lead to greater rights, protections, flexibility and autonomy for tenants;
- improve fairness at the end of a tenancy (including the return of deposits);
- provide equal rights to English and Welsh tenants;
- provide more choice of products for consumers;
- protect Scottish pubs and jobs in the Scottish brewing industry;
- lead to a decline of generic, brewery-owned or tied pubs, with a resulting growth in independent pubs;
- encourage investment;
- help guide and support both landlords and tenants;
- support Scottish brands and businesses;
- enable businesses to respond more effectively in a rapidly changing marketplace;

- improve the current lack of knowledge around agreements and the industry in general;
- lead to a reduction in the high turnover of premises; and
- give Pubcos the opportunity to show their integrity which may be valued by customers.

One anonymous respondent (ID 53078519) listed 33 advantages, many of which repeat the advantages listed above, and also in answer to question 1. Some of the additional advantages listed included that the proposal would—

- reduce dependence on state benefits by low income publicans due to high rents and beer prices;
- allow local people to buy their local pubs and make local investments;
- enable pubs to diversify in their individual ways to better cater for the needs of their local population;
- provide assured tenancy, so that there's an automatic right to renewal of lease after 12 months;
- protect the right of the tenant to source his own building insurance at open market prices;
- protect the right of the tenant to allow access to the owner by prior arrangement;
- protect the right of the tenant to fair rent reviews when required;
- protect the right of a new tenant to transparency of all financial details of the pub;
- require the pub owners to ensure new tenants have the necessary background experience to manage the business; and
- protect the right of the tenant to buy his pub, when the pub owner decides to sell.

The Scottish Licensed Trade Association also stated that the proposal should lead to better sharing of, and access to, information and knowledge—

“The principle of fairness should also encompass a rebalancing of the information and knowledge available to tenants, who often feel overpowered by the technicalities and information that is readily available to the pub operating companies and as a consequence often leads to the belief that there is no alternative solution other than that being proffered by the pub company.”

Question 4: What do you think would be the main disadvantages, if any, of establishing a statutory Scottish Pubs Code and Adjudicator?

Two hundred and eight respondents answered this question. However, many of those answers did not actually list any disadvantages; rather, they confirmed that those respondents thought there were no disadvantages.

Of those who did list disadvantages, there was significant repetition of points given by those opposed to the proposal in answering question 1. Disadvantages given included—

- the cost of setting up and running the new system and the negative effect of that on the sector;
- increased red-tape and Government interference;
- reduced levels of investment by Pubcos;
- that the move to tied loans will increase which will in turn restrict the choice and range available to consumers;
- that there would not be enough work for an adjudicator as there are very few disputes;
- if the adjudicator has links to Pubcos then the Bill's intentions may suffer at the expense of tenants;
- that the voluntary code is working well so the proposal is unnecessary;
- that the system in England and Wales, on which this proposal is based, has had many problems;
- that there are security of tenure issues in Scotland and concerns that notices to end tenancies may result following an adjudicator referral or MRO application;
- that Pubcos may compensate for loss of income by raising rents and charging more for other services;
- that it will create a time-consuming process to make decisions;
- that a one size fits all system will not suit all pubs and circumstances;
- that it may lead to pub closures;
- that legal fees may be involved for tenants; and that
- that long-term agreements could be threatened by Pubcos deciding to move pubs to different contractual arrangements (such as more managed pubs) or to sell pubs.

Increased rent/costs

Several respondents that were supportive of the proposal expressed concern that Pubcos may try to increase rent and other costs to compensate for any loss of income as a result of the proposal. Some stressed the need for the Bill to contain safeguards to prevent this happening.

Problems with England and Wales legislation

Another main theme was the difficulties being seen in England and Wales following the enactment of similar legislation. One anonymous respondent (ID 60225674) stated—

“If at the onset the premise is to police the Pubcos then the risk is that legislation and the code becomes so complex as to be unenforceable. Look at the code in England & Wales right now, only this week 12 multiple tied operators wrote to the [UK] parliament pointing out "This [legislation] was made complicated by opaque, unintelligible regulations that demonstrate a lack of understanding of the process of landlord and tenant relationships, compounded by unrealistic implementation dates all of which led to uncertainty of application. The PCA [Pubs Code Adjudicator] was put in place to regulate and adjudicate the process in a fair and expeditious manner. Neither the Pubs Code, nor the PCA have delivered so far and after a year, we are

not aware of a single case that has successfully navigated the PCA to arrive at an adjudication.””

Punch Taverns was one of several respondents to highlight other negative unintended consequences of the legislation in England and Wales, stating that it has seen a move by Pubcos to take pubs under more direct control, via management or short-term arrangements, and that those on longer leases have had their ability to sell on their remaining lease at a premium restricted.

Punch Taverns also listed a number of differences between the sectors in Scotland and the rest of the UK which removed the need for the legislation, such as that—

“Every one of our 224 pubs are free to buy locally sourced food in a market that is increasingly important to their future survival.”

“Over 90% of pubs are free to buy locally sourced spirits. This is hugely significant as in Scotland spirit sales over index by 5x in Scottish pubs when compared to England and Wales.”

“In England and Wales, 90% of pub tenancies come with living accommodation. In Scotland that figure is less than 10%. This is significant because if a Publican leaves the pub in England they often lose their home, which drives a good deal of emotion which is perfectly understandable.”

Contractual arrangements (including loan agreements)

The SBPA submission highlighted the issues of marketplace change and perceived impact on consumer choice. It stated that the changes outlined in the proposal would lead to a change in the types of agreements being offered in Scotland with a move to move short term and management agreements. This would have a negative impact on the number of new entrants and entrepreneurs entering the sector and could threaten those with long term agreements in place. It went on—

“This is heightened by the fact that Scottish agreements do not have Landlord and Tenant Act 1954 protection, as in England and Wales. Therefore there is greater risk of companies taking back sites into direct control or seeking a tied arrangement with a new tenant. Currently, under the voluntary system there is little reason to do this as the balance works well for both the landlord company and tenant.”

There were also concerns that the proposal would lead to the proliferation of loan agreements, where publicans enter into agreements with individual brewers. The large Pubcos argued that this would restrict choice for consumers and also lead to tenants taking out loans with the breweries concerned.

Consumer choice

Regarding consumer choice, the SBPA stated that it was not the case, as the consultation document suggested, that there was less choice of draught beers in tied pubs, in fact, it believed that the opposite was true. It cited data from April 2015 which demonstrated that leased and tenanted pubs offered a greater choice of both draught beers and cask ales than free pubs. It added—

“Some companies have a rotating craft/cask beer option for their tenants which include an additional number of Scottish micro and craft brewers. The fact that choice is not an issue here was also recognised in England & Wales by the inclusion of stocking rights for those brewers covered by the new legislation. A vast majority of pubs in Scotland are independent and many of these choose to take up loan agreements with individual brewers, which often restricts the pub to only the brands produced by that particular brewer. There is no reason to believe that this would not continue, or indeed become more widespread, as a result of more pubs going free-of-tie which would have the consequence of less beer choice for the consumer.”

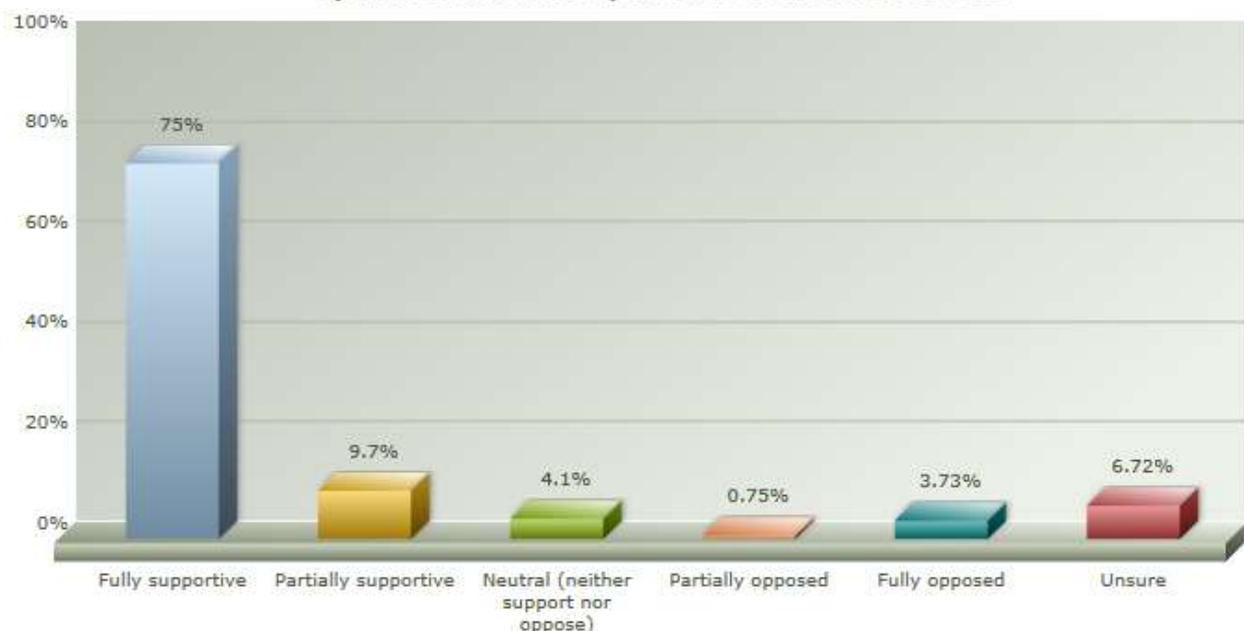
Pub closures

Several respondents were concerned the proposal could lead to some pub closures, something which is acknowledged in the consultation document. The Scottish Property Federation believed that the number of pub closures and cost to business could be considerably higher than forecast in the consultation document.

Market Rent Only option – question 5

Two hundred and sixty-eight respondents answered this question, as follows—

5. Which of the following best expresses your view of establishing a Market Rent Only option for tenants as part of a Scottish Pubs Code?



Fully and partially supportive

A large majority of responses (227 responses, 85% of those who answered the question) were supportive of establishing a Market Rent Only option for tenants (201 respondents, 75%, fully supportive and 26 respondents, 10%, partially supportive). Several responses to this question repeated reasons given for support when answering question 1, and also advantages listed when answering question 3. Reasons given specific to the Market Rent Only (MRO) option included that—

- it should be available in Scotland as it is available in England and Wales;
- it would give tenants the right to opt-out of obligations to buy certain products from a Pubco and pay market rate for products;
- it would give tenants and customers a wider choice of products and enable them to take advantage of developing product trends thus boosting local businesses, economy and tourism;
- it would reduce the chances of pubs having to close due to unreasonable rental agreements;
- it would help make rents fairer as some agreements involve high rents as well as high prices; and
- it would prevent Pubcos buying local pubs, giving more opportunity for local people and businesses.

Many felt that an MRO option was fundamental to the proposal and would be the central aspect to delivering meaningful change for tenants. The SLTA stated that an MRO option along with parallel rent assessment would give tenants a fair and transparent review of the rental value of their property, and then the ability to pay a non-discounted rent and buy products and services on the open market.

Many tenants gave examples of the current prices they are being charged, which they consider to be unreasonable. One anonymous respondent (ID 60240118) stated

“I'd like to be given the choice of buying products from other suppliers at a fair price. I currently pay almost double to Punch Taverns for all of my tied products. e.g. Booker Paisley standard shelf price for a case of Budweiser 24x330ml is £15.49 ex vat; Punch taverns' best price for exactly the same case is £30.78 ex vat (correct 3 July 17).”

Another anonymous respondent (ID 61576462) stated—

“Anecdotal evidence suggests that the existence of the MRO option in England and Wales has put pressure on pubcos to offer these deals in more cases. The effect on licensees with a high turnover of draught beer is transformative. It means that instead of paying inflated wholesale prices on drinks (squeezing net income and creating artificial inflationary pressure passed on to consumers), and/or having a restricted range of suppliers to choose from, a pub can choose from a

full range of beer suppliers, almost all of which would be Scottish. Its profit margins on a cask would go from virtually nothing to match those found in the free-of-tie sector.”

Several respondents believed that the introduction of an MRO option would have a constructive and positive effect by incentivising Pubcos to review their own practices and offer more attractive terms and conditions. Tennent Caledonian Breweries noted that Pubcos would have to work harder if they wanted tenants to remain tied, and CAMRA stated 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 small minority of existing licensees would opt to go free of tie.”

Several respondents believed that an MRO option would lead to more pubs being better able to stock a wider range of products, such as local and other Scottish products, including craft beers. The Scottish Tourism Alliance stated this could bring real benefits to the Scottish economy—

“The National Tourism Strategy Tourism Scotland 2020 is focused on the delivery of authentic memorable experiences in every aspect of the customer journey thus having the opportunity to sample choice options of Scottish Food and Drink in all food pubs is preferable. The 2030 Food and Drink strategy also aspires to achieve £30billion revenues and a key thrust of this is through food and drink focused tourism,- Pubs therefore being central to this.”

Reasons for partial support

Twenty-six respondents were partially supportive of the MRO proposal, with some reasons repeating those given for full support above. Other reasons given included—

- uncertainty about how the MRO would be decided;
- that market rent can be high, hard to determine and easy to dispute;
- that it should not be compulsory;
- that a compulsory purchase option should be available;
- that some local village pubs may need subsidised rents and rates to stay open and this needs to be allowed for in the legislation; and
- that many pubs would not exist if not Pubco owned without other support.

Fully and partially opposed

A small minority of respondents who answered this question (12, 4.5%) were opposed to the MRO proposal (10, 4%, fully opposed and two, 0.5%, partially opposed). Some of the reasons given repeated reasons given for opposition

to the proposal as a whole given in answers to questions 1 and 4, or referred back to those answers.

MRO already an option

Several Pubcos noted that free-of-tie arrangements were already available, and that the tied arrangement being addressed by the proposal was only one of many options for potential publicans in Scotland.

Negative MRO experience in England and Wales

Another common argument amongst the respondents was that the MRO experience in England and Wales has been a highly complex process with little uptake by tenants, offering no evidence it would be effective in Scotland. One Pubco, Hawthorn Leisure Ltd, stated that Scots law is different from England as there is no Landlord and Tenant Act, so complex legal changes would be required in Scotland to give effect to an MRO option. The SBPA agreed, stating that there was no right to renew as there is under the Landlord and Tenant Act 1954 in England and Wales.

Threat to investment and viability

Several respondents noted that MRO could lead to Pubcos withdrawing investment and other benefits to pubs, which could threaten their viability, which would have negative economic and employment consequences. One anonymous individual respondent stated that—

“... the companies who currently invest in the Scottish market may cool this as they will no longer be able to guarantee the return on the level of capital being invested. This in turn will reduce the quality of the pub estate in Scotland and will also put jobs at risk.”

Reasons for partial opposition

Three respondents were partially opposed. Reasons given included that benefits were not clear and that Pubcos may decide to sell rather than rent pubs if MRO was an option.

Neutral

Eleven respondents (4%) were neutral on the MRO proposal, but only four respondents explained their answer. Reason given included that—

- more information is required on this aspect of the proposal before a view could be expressed;
- rent is not a big issue as it is dictated by market forces and the beer tie offsets rent in quieter periods;
- there are pros and cons to all possible approaches; and
- the value of pubs may drop if there is too much regulation.

Unsure

Eighteen respondents (7% of those who answered this question) were unsure on the MRO proposal. Reasons given included that the respondent did not

have enough information/data to come to a view, and that it will depend on the details and how it is implemented.

Proposed contents of the Code and scope of Adjudicator's powers

Question 6: What do you think of the proposed contents of the Bill and the Code, and the scope of the Adjudicator's powers, as detailed on pages 17-18 of the consultation document?

One hundred and seventy-one respondents answered this question.

Supportive

A large majority of respondents were supportive of the proposed contents of the bill and the code and the scope of the adjudicators' powers. Many felt that they were sufficient as set out, believing them to be wide-ranging and likely to be effective. Several of those who were broadly supportive thought that the proposals did not go far enough, or required refinement when the bill was drafted. Suggestions for improvement/consideration included that—

- the code and the adjudicator's role should include powers to investigate alleged unfairly high rents;
- the adjudicator must be able to impose penalties for breaches of the code;
- rent reviews should be available when the bill is passed, not every five years as is the case in England and Wales;
- the required skills and independence of the adjudicator should be made clear;
- the issue of responsibility for repairs should be included; and
- the reporting requirements should be strengthened.

Commenting on the required scrutiny of any secondary legislation (such as that containing the details of the code), Patrick Harvie MSP stated—

“I support the general approach, but as with the regulations relating to the operation of the private rental housing market, I would make the case for regulations to be subject to an affirmative or superaffirmative procedure, to ensure adequate scrutiny of the details. Post-legislative scrutiny should also be considered by a relevant parliamentary committee once the system comes into operation.”

In terms of the drafting of the measures, the Federation of Small Businesses (FSB) stated—

“These measures strike a good balance between following the 2015 Act and enabling a flexible response to Scottish circumstances. FSB recommends that the Scottish Parliament's Non-Government Bills Unit liaise with counterparts in the House of Commons to learn how Scottish legislation could improve upon the 2015 Act. Similarly, the Pubs Code Adjudicator, Paul Newby, should be consulted to ascertain whether

unforeseen legislative barriers hinder enforcement measures in England and Wales.”

Not supportive

A small minority of responses were not supportive, mostly on the basis that they opposed the overall proposal and so did not believe there should be a bill, a code or an adjudicator. Other reasons given included that—

- there should be one code and adjudicator for the UK;
- the code and adjudicator represent too much complication and interference;
- the proposed bill and code are one-sided and do not reflect the benefits of the tied pub model;
- the proposals do not address concerns about security of tenure;
- the effect of the England and Wales Act is not reflected in the proposals;
- loan agreements are not mentioned; and
- further research is required to inform the proposals.

The SBPA and several Pubcos stated that there was no need for an adjudicator and if one was established they would have very little to do due to the lack of disputes in the industry. The SBPA noted that there have not been any “substantiated complaints to the voluntary system over the last few years”. Some of these respondents were also of the view that there could be disproportionate cost involved in funding a system featuring a code and adjudicator. Greene King cautioned against introducing a system in Scotland when the issues with the system in rest of the UK are not fully understood—

“... the system in England and Wales has only been in place since 21 July 2016 and as such it is not yet clear whether the system is functioning as intended by [the] Small Business, Enterprise and Employment Act 2015. A thorough analysis of the impact of the English and Welsh Code should be undertaken before any proposal to copy its measures is considered elsewhere.”

The Pubs Advisory Service (which was fully supportive of the proposal overall) stated that the proposed contents of the Bill and code, and the scope of the adjudicator’s powers were—

“not needed as the POBs [Pub Owing Businesses] will seek to water it down or circumnavigate it, just go for MRO on demand, it’s self policing and cheaper all round. Let POBs sell the benefit of being tied, if the tenant is no good and makes the jump then they will fail in the free-of-tie sector, it is all very democratic and easy to manage.”

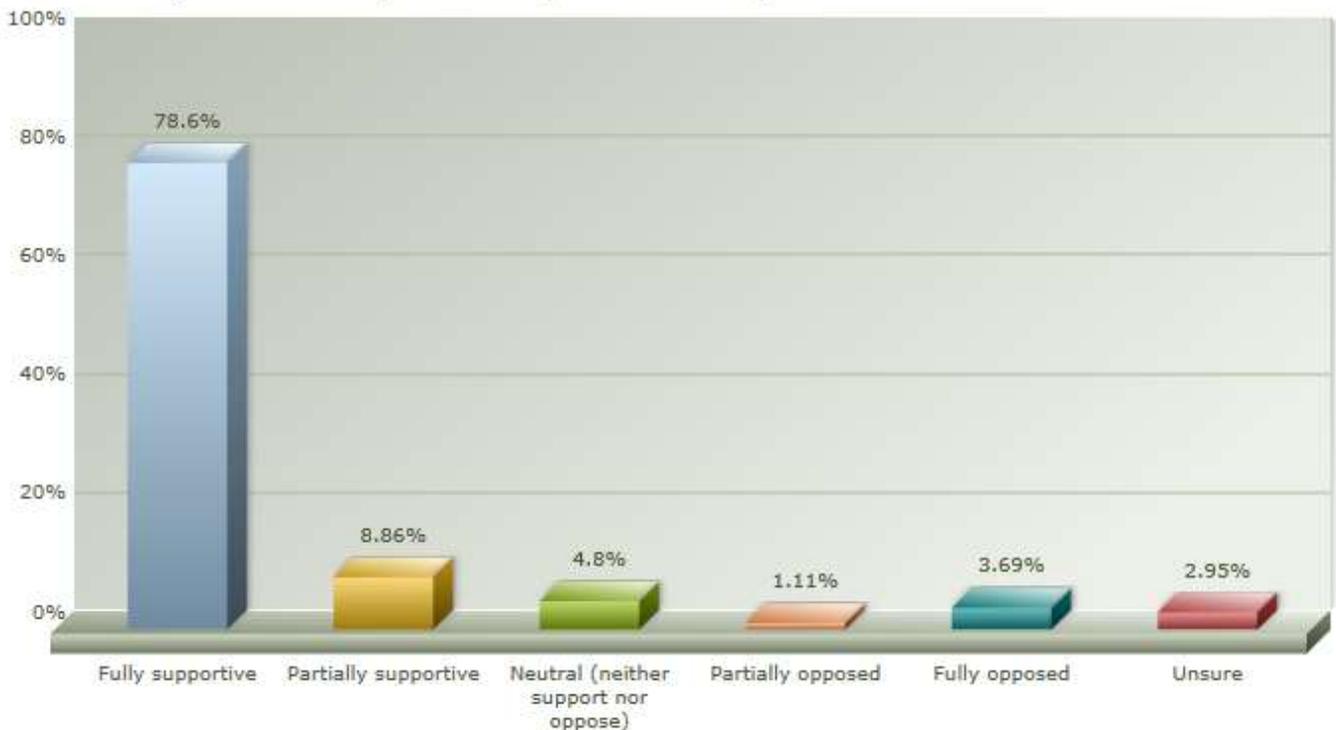
One anonymous respondent (ID 53078519) stated that the Bill would not achieve its overarching aims if it replicated the legislation in England and Wales and outlined essentials for Scottish legislation, stating the bill must—

- apply to all tenancy agreements longer than 12 months, and not just long leases;
- apply to all pub tenancies irrespective of how many pubs the pub owner has;
- be clear that the tenant is free to choose any range of products stocked, without consultation with the pub owner;
- make it illegal for a pub owner to specify or influence brands or products stocked in a pub;
- empower the tenant to purchase any product from any source it wishes, without consultation or influence from the pub owner;
- abolish any supply tie;
- allow the tenant to obtain competitive insurance quotes for the pub owner to match, rather than charging tenants excessive insurance premiums; and
- entitle the tenant to an assured tenancy after 12 months.

Imposition of financial penalties – question 7

Two hundred and seventy-one answered this question as follows—

7. Which of the following best expresses your view of the Scottish Pubs Code Adjudicator being able to impose financial penalties for breaches of the Code?



Supportive

A large majority of respondents, 237 (87%) were supportive of the adjudicator being able to impose financial penalties (213 respondents, 78%, fully supportive and 24 respondents, 9%, partially supportive). Reasons given included that—

- it would add weight to the legislation and ensure it would be complied with;
- it would act as a deterrent;
- it would hold Pubcos to account;
- it may be the only way big business will sit up and take notice; and
- it is in line with the powers in the England and Wales legislation.

Several respondents stressed that breaches and penalties must apply to both parties.

One anonymous respondent (ID 55484894) stated—

“Without the ability to impose penalties the adjudicator would not have any teeth with which to force compliance. However there should have to be a formal notice given and a time limit to remedy breaches of the code before financial penalties are applied.”

Another anonymous individual (ID 57642371) stated—

“Pub companies have for many years behaved appallingly towards their tenants knowing that they would not suffer any penalties for their dubious actions. The culture still pervades today that the tenant is there to be exploited for the benefit of pub company shareholders. The pub company will never voluntarily change their ways by themselves. Only by legislation and threat of sanctions will bring about a change in their behaviour towards tenants.”

The Scottish Licensed Trade Association was fully supportive but stressed that other penalties should be available, such as Pubcos providing undertakings re future conduct and imposing smaller than maximum fines.

Reasons for partial support

Twenty-four respondents were partially supportive, and reasons given included that—

- all parties should be accountable;
- careful consideration should be given to how any monies generated from fines levied against Pubcos should be used;
- there needs to be a mechanism to prevent unfair penalties on a pub that accidentally breaches the code;
- penalties should depend on the severity of the particular case;
- the imposition of financial penalties should be encouraged as a last resort and other penalties should be considered first;
- fines should not be so high as to put landlords out of business as this may have a detrimental impact on tenants;
- more information is needed regarding the penalties proposed and the way they would be upheld;
- careful monitoring is required to ensure fairness;
- this should not be used as a way to raise funds; and

- the penalties proposed are not severe enough.

West Dunbartonshire Licensing Board was one of the respondents that wanted careful consideration given to how any money raised from fines would be used.

Opposed

Thirteen respondents (5% of those who answered this question) were opposed to the adjudicator being able to impose financial penalties (10 respondents, 4%, fully opposed and three respondents, 1%, were partially opposed).

The SBPA and the large Pubcos which commented stated opposition on the basis of their fundamental opposition to the whole proposal. These respondents stated that if an adjudicator did exist, it should not be able to impose financial penalties. Another anonymous respondent was opposed on the basis that the pub tie should not exist at all, so there would be no need for a code and adjudicator.

One organisation, although neutral on the overall proposal, was fully opposed to the adjudicator being able to impose financial penalties, explaining that “I must purchase my produce from the brewery, however on occasion there are times where I need to purchase barrels outwith due to high unexpected demand”.

Reasons for partial opposition

Two respondents were partially opposed. One anonymous individual (ID 59868357) stated that financial sanctions would add little and may lead to the closure of more pubs.

Neutral

Thirteen respondents, 5% of those who answered this question, were neutral (neither supportive nor opposed) to whether the Scottish Pubs Code Adjudicator should be able to impose financial penalties for breaches of the Code. However, only five respondents explained the reasons for their answer. Reasons given included that—

- fines would not be sufficient to make an impact on large Pubcos;
- Pubcos would recoup fines via higher prices;
- Pubcos would have resources for legal challenges which may set precedents; and
- financial penalties are often ineffective at driving behaviour change.

Unsure

Eight respondents, 3% of those who answered the question, were unsure whether the adjudicator should be able to impose financial penalties. Reasons included—

- a lack of clarity on who any fine would be imposed on; and
- that lawyers would be the only beneficiaries.

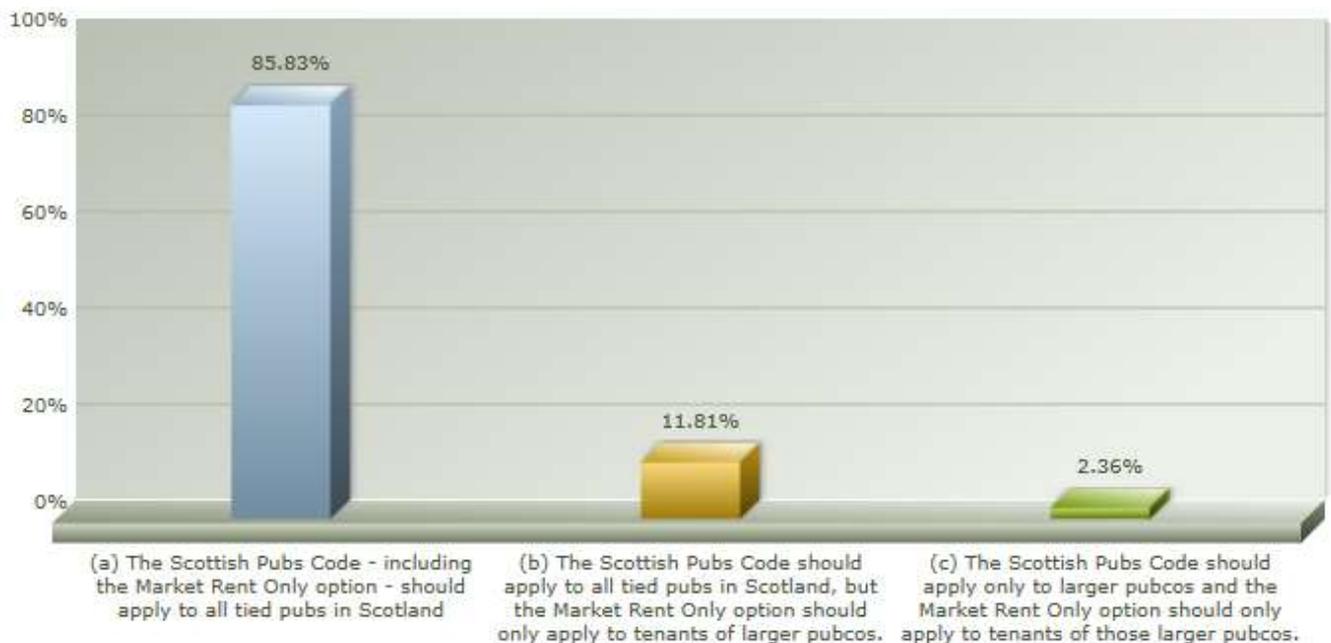
Stuart Ross (who was fully opposed to the proposal overall) stated—

“I would like to learn from the experience so far in England. Has this been researched? My contacts in the trade say that Adjudicator performance has been inconsistent and highly arbitrary but I have seen no concrete evidence.”

Application of Code and Market Rent Only option – Question 8

In terms of who the Scottish Pubs Code, and Market Rent Only option, should apply to, which of the following best expresses your view?

Two hundred and fifty-four respondents answered this question as follows—



A few responses, such as those by the large Pubcos, made a “none of the above” response and repeated opposition to the overall proposal.

Option (a)

A large majority of respondents who answered this question, 218 (86%), favoured option (a): that the Scottish Pubs Code – including the Market Rent Only option – should apply to all tied pubs in Scotland. Reasons given included that—

- it is fairer and simpler if it applies to all;
- smaller pubs often suffer the worst treatment so need to be protected;
- options (b) and (c) would not uphold the fairness which underpins the proposal;

- if it only applied to larger Pubcos it could be seen as targeting and punishing more profitable businesses;
- options (b) and (c) could be seen as discriminatory against bigger Pubcos; and that
- if there is a different application Pubcos could take avoidance measures (i.e. restructuring their businesses to avoid having the code applied to them).

Almost all of those who selected this option were supportive of the proposal overall. However, one respondent (ID 53106915), who was fully opposed to the proposal, noted that if had to happen that it should be applied fairly across the sector.

Negating Pubco avoidance

Many respondents highlighted that if the proposal were applied to a specific category of pubs only, Pubcos would have the opportunity to restructure their businesses to ensure they were not caught by any defined category. The SLTA stated—

“In recent times companies have “split” or set up different “divisions” within the company and we are of the opinion that, from a Pubco perspective, it could be beneficial for a company [to] “split”, drop below any set minimum level and fall outwith the scope of any Code of Practice. Parallels can be drawn with the introduction of the “Beer Orders” in 1989. The Orders restricted the number of tied pubs that could be owned by large brewery groups in the United Kingdom to 2,000, and required large brewer landlords to allow a guest ale to be sourced by tenants from someone other than their landlord. The industry responded by simply spinning off purely pub-owning companies (“Pubcos”), such as Punch Taverns and Enterprise Inns, from the older brewing-and-owning companies and then “supplied” the newly formed Pubcos with their beer.”

Smaller Pubcos

Some other respondents debunked the notion that it is only tenants of large Pubcos that require the protections offered by the proposal. The Pubs Advisory Service stated—

“the smaller companies have adopted and used the discredited agreements used by the larger companies – literally copied them word for word, some of the abuses carried out were worse under the smaller companies.”

Option (b)

Thirty respondents (12%) favoured option (b): that the Scottish Pubs Code should apply to all tied pubs in Scotland, but the Market Rent Only option should only apply to tenants of larger Pubcos. This included CAMRA. Reasons given for supporting this option included that—

- this is the model used in England and Wales and Scotland should be consistent with that;
- tenants of larger Pubcos are most under threat from unfair practices;
- small brewers need to protect their route to market;
- it is the only option that ensures the proposal does not negatively impact on smaller pub companies; and
- if applied to all it would prevent the initial growth of the Pubco sector.

One anonymous individual respondent (ID 55484894) who selected this option stated—

“When I reference larger pubcos I feel that should refer to pubcos many would consider small, perhaps ones owning over 10 venues. The reason for this being that delivering the option could bankrupt pubcos smaller than this. What may be better is if at first the MRO option only applied to larger pubcos giving a time limit for smaller companies to prepare for this eventuality, perhaps 5 years, after which the MRO would apply to all tied pubs in Scotland.”

Option (c)

A very small minority, six respondents (2% of those who answered this question), favoured option (c): that the Scottish Pubs Code should apply only to larger Pubcos and the Market Rent Only option should only apply to tenants of those larger Pubcos. This option was supported by Tennent Caledonian Breweries, which supported the same 500 or more tied pub threshold used in England and Wales, on the basis that it protects the concept of a UK wide market and is a tested threshold. It also noted that a lower threshold would effectively penalise pub groups for being Scottish.

Question 9: If you answered “(b)” or “(c)” to Question 8 how should larger Pubcos be defined (e.g. by size of turnover, number of tied pubs owned in Scotland (if so, how many), etc.)?

Thirty-eight respondents answered this question: the 36 respondents that answered (b) or (c) to question 8 plus two others. Suggestions given for how best to define a larger Pubco were—

- by the number of tied pubs they owned (no exact number specified);
- by an equivalent definition as used in England and Wales (which is 500 tied pubs or more - however, no Pubco owns 500 or more tied pubs in Scotland);
- by the number of pubs owned (not just tied pubs)
- by ownership of a minimum number of pubs (there was no consensus on what this number should be and many different suggestions were made, including: 3, 10, 20, 30, 40, 100, 2000)
- according to the number of pubs in a geographical or local authority area; and
- by size of turnover (no numbers specified).

Stuart Ross believed that any code should apply to all businesses, was critical of a definition for larger Pubcos, stating that setting an arbitrary limit was “a nonsense” that would have unintended consequences, creating an artificial market based on whatever the limit was (i.e. if the limit was more than 10 pubs, a company with 11 could sell one pub to a company with nine) and that some tenants would not have the same right as others just depending on what the limit was and how many pubs their particular company owned. He also questioned how ownership numbers would be monitored if a limit was set, and that if turnover was used instead as a criterion, how it would be determined, noting that some large Pubcos derive huge turnover from activities other than tied tenancies.

Financial implications – question 10

Two hundred and sixty-one respondents answered this question (although not all of those made selections for all of the three parts of the question) as follows—

10. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:



In broad terms, a majority of those who responded to this question thought there would be either an increase in costs, or a neutral impact, for Pubcos, and that there would be a reduction in costs for pub tenants and customers.

Pubcos

Two hundred and fifty-five respondents responded to question 10(a) as follows.

Increased costs

One hundred and eighteen respondents, 46% of those who answered this question, thought there would be an increase in costs for Pubcos (19

respondents, 7%, though there would be a significant increase and 99 respondents, 39%, thought there would be some increase). Reasons given included that—

- the increased regulation and administration (including funding of an adjudicator) will cost Pubcos more;
- Pubcos in Scotland may pay more than those in England and Wales due to the smaller number of tied pubs in Scotland;
- Pubcos will have less income as a result of the proposal (for example due to restructuring);
- Pubcos will have increased costs such as training and recruiting staff and in house expertise; and
- Pubcos would lose economies of scale.

Some respondents thought the increase in costs for Pubcos would be short-term, while they came to terms with the new rules and their impact on their business.

Cost neutral

Seventy-nine respondents, 31% of those who answered this question, thought that the impact on Pubcos would be broadly cost-neutral. Reasons given included that any increased costs would be short term until Pubcos adjust to the new rules and identify other revenue streams and that Pubcos would increase rent and other charges to cover any loss in income. The SLTA stated that Pubcos do not invest more in tied pubs so there would be no negative impact on that basis.

Reduced costs

Twenty-four respondents, 9% of those who answered this question, thought there would be reduction in costs for Pubcos (13 respondents, 5%, thought there would be some reduction and 11 respondents, 4%, thought there would be a significant reduction). Reasons given included that Pubcos would not have to provide investment and other services to free of tie tenants.

Unsure

The remaining thirty-four respondents, 13% of those who answered the question, were unsure. One respondent commented that Pubcos would need to manage their businesses properly to negate any increased costs

Tenants

Two hundred and fifty-eight respondents responded to question 10(b) as follows.

Increased costs

A minority of those who answered this question, 30 respondents, 11.5%, believed there would be an increase in costs (nine respondents, 3.5%, predicted a significant increase in costs and 21 respondents, 8%, predicted some increase). Stuart Ross predicted that tenants would need to borrow to invest in, and improve, their businesses, as Pubcos would no longer be doing

this, and the Pubco Hawthorn Leisure Ltd believed costs for tenants would increase due to increased administration and “red-tape”. Others believed that Pubcos would pass on increased costs to tenants (for example, by increasing rents) and that tenants’ costs would also be increased by them having to fund various support and services currently provided by the Pubco. The SBPA stated—

“Whilst there may not be a direct financial cost on tenants ... the move towards managed pubs and shorter agreements as a result of this legislation would lead to longer term agreements (which are beneficial for many tied tenants) being phased out with the loss of ability to charge premiums on assignation, for example. If taking the MRO route, tenants would have in effect a standard free-of-tie agreement. They would lose commercial benefits offered as part of the tie by pub operating companies rather than the licensee having to source and pay for these themselves – these could include licensing training, BII membership, cellar training, Business Development Manager contact and assistance, dispense equipment, marketing, drinks delivery and logistics, advice on websites/social media, internal sales tools, commercial services, and insurance. Having to source and pay for these themselves would be a significant increase in cost for tenants.”

Punch Taverns agreed that there would be significant cost increases for tenants, stating—

“This would be a significant increase in cost for tenants and as the CGA study shows, independent pubs estimated that these costs add, on average, over £17,800 to their operational costs.”

Reduced costs

A majority of those who responded to this question, 176, 68%, thought there would be a reduction in costs for tied pub tenants (97 respondents, 38%, thought there would be significant reduction and 79 respondents, 30%, predicted some reduction in costs). The vast majority of these respondents, many of who were current or former pub tenants, believed that the proposal would lead to lower rents and lower costs of products. Several respondents gave examples of reductions they expected to see, such as this anonymous organisation (ID 60326984) which stated—

“50% savings on packaged products. 25% savings on draught! Financial year 15/16 I did a comparison tied vs free. Personally £36K better off!”

Many respondents also believed that profits may increase due to increased custom as a result of a wider range of products being available in free-of-tie premises and increased viability and profitability generally for free-of-tie premises.

Cost neutral

Thirty-one respondents, 12% of those who answered the question, thought there would be a neutral impact. Comments made included that tenants would source products from elsewhere but find their costs to be broadly the same, and that expected savings and increases in costs (e.g. able to source cheaper products but losing some Pubco support and perhaps seeing a rent increase) would balance out to a neutral overall affect.

Unsure

Twenty-one respondents, 8% of those who answered the question, were unsure. Some respondents thought it was difficult to make an estimate of potential cost impacts, or felt they did not have sufficient knowledge or information to give a view. Greene King stated that whilst there would undoubtedly be costs for tied-pub tenants, it was difficult to give any indication of what this would be as no thorough analysis has yet been undertaken of the impact of the legislation in England and Wales on tenants. Harvie's Bar stated that costs would depend on the strategies adopted by Pubcos in response to any new Act.

Customers

Two hundred and fifty-three respondents responded to question 10(c) as follows.

Increased costs

Twenty-two respondents, 9% of those who answered the question, thought there would be a cost increase for customers (two respondents, 1%, thought there would a significant increase and 20 respondents, 8%, thought there would be some increase). Essentially, the reasons given were that either there would be no cost savings for the tenant to pass on to customers, and that increases may be passed on, or that, in the event of any saving, this would not be passed on to the customer. The Pubco Hawthorn Leisure Ltd believed costs for customers would increase due to the costs of increased administration and "red-tape" being passed on to consumers.

Reduced costs

One hundred and twenty-seven respondents, half of those who responded to this question, thought there would be a reduction in costs for customers (49 respondents, 19%, thought there would be a significant reduction and 78 respondents, 31%, predicted some reduction). Many thought that tied pub tenants would pass on savings made on products to the consumer and that tenants would be able to select from a wider range of stock and that the competition should drive prices down for consumers. Chis Reid stated—

“The trade has faced unprecedented increases in costs over the past years due to the change in business climate, increased demands on business with pressures such as Business Rates, VAT, Pension Contributions and Minimum Wage as well as a steady increase and rise in the costs of services and products. The savings are unlikely to be passed in full to the customer initially, however, over time as

businesses can stabilise and move forward, indirect benefits would also be passed to the customers, with improvements made to the business – such as increasing staffing levels, resourcing more events for customers, renovations or additions to premises, increase in general standards of comfort, increased product ranges and choice for the customer, all things that have suffered as business expenses have had to be cut or reduced over the years.”

Cost neutral

Seventy-nine respondents, 31% of those who answered the question, thought the proposal would be cost-neutral for customers. The most common reason given was that the contractual arrangement of a pub has no effect on prices being paid by consumers (either because any saving made by tenants would be invested in premises or used for increased personal income, or because wherever products are sourced from they have similar consumer prices). One anonymous respondent (ID 59868357) thought this was because the proposal does not address the main issues affecting pubs which are the impact of supermarket prices and the reduction in customer numbers.

Unsure

Twenty-five respondents, 10% of those who answered the question, were unsure of the cost impacts on customers. Reasons given included that the impact on customers would depend on plans and approaches adopted by individual pubs, and that the respondent did not feel sufficiently informed to comment. Greene King again stated that as there has been no analysis undertaken yet of the legislation in England and Wales it is not possible to compare that with any impacts of Scottish legislation, albeit that the markets are different.

Other comments

An anonymous individual (ID 55484894) identified a further category that would be impacted: small breweries, as more pubs would be free to buy from small breweries which would encourage more people to open breweries and help grow the industry as a whole.

Question 11: How do you think the associated costs of the proposal (predominantly the establishment and on-going running costs of a Scottish Pubs Code Adjudicator) should be funded?

Two hundred and eight respondents answered this question. There were no suggested options contained in the question, rather respondents were free to make their own suggestions, of which a number were slightly ambiguous, hence the approximate numbers given below. A majority of respondents thought that the proposal should either be funded by Pubcos (approximately 50 respondents) or the Scottish Government – either directly (approximately 39 respondents) or via tax revenue (approximately 34 respondents), including both existing and new forms of taxation. Some respondents suggested various forms of combined funding. Others offered further alternative methods of funding, and some respondents were not sure. Some

who were not supportive of the proposal answered this question by saying it should not be funded at all.

Pubcos funded

Approximately 50 respondents thought that the proposal should be funded solely by Pubcos. Comments included that—

- this matches the system in England and Wales;
- the funding should be managed on a sliding scale basis, with larger Pubcos paying more;
- larger Pubcos only should pay;
- Pubcos should fund the proposal via an operating licence fee; and
- the levy in Scotland would be smaller than that in England and Wales due to the smaller sector size.

Scottish Government funded (including taxation)

Approximately 39 respondents thought the proposal should be directly funded by the Scottish Government, with a further approximately 34 respondents stating that various forms of taxation should be used. A number of these respondents stated that the Scottish Government should cover the costs “initially”. One anonymous respondent thought that if Pubcos have to pay for the proposal that they would find a way to pass the costs on to tenants. There were also several respondents who stated that the Government should fund the proposal to ensure independence and impartiality.

Two respondents specifically specified that the Government should re-direct funds from other departments to fund the proposal, one suggesting the arts budget, and one suggesting the police budget. Amongst the approximately 34 respondents who stated that the proposal should be funded by the taxpayer, various forms of taxation were suggested, including—

- council tax;
- income tax;
- VAT on alcohol;
- all taxation on alcohol and other drinks;
- a tax on fizzy drinks; and
- newly created taxes on Pubcos and/or supermarkets.

Combination sector funded

Approximately 24 respondents suggested various forms of combined funding, whereby different parts of the sector, and perhaps the Scottish Government, would all make funding contributions. Suggestions included funding—

- by the Scottish Government and Pubcos (approximately 9 respondents);

- by the Scottish Government, Pubcos and tenants (approximately 11 respondents); and
- by Pubcos and tenants (approximately three respondents).

Some of these responses suggested how to split the funding.

Other source funded

Several other suggestions were put forward as to how the proposal could be funded, including—

- six respondents thought the proposal should be funded by large drinks manufacturers;
- four respondents thought that tenants should fund the proposal;
- two respondents thought a new association should be established with membership fees funding the proposal;
- two respondents thought that supermarkets should fund the proposal due to the volume of alcohol they sold;
- other suggestions included—
 - by a prize draw;
 - by a public appeal; and
 - by customers.

Other comments

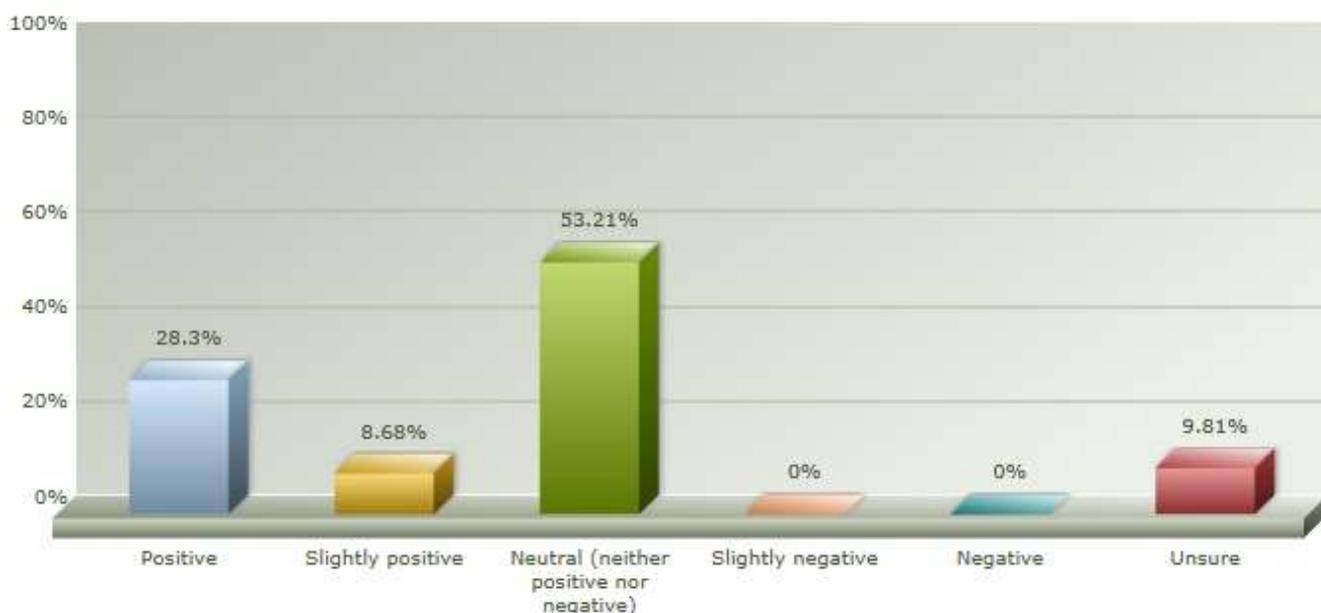
Some respondents made comments on options for keeping the costs of the proposal to a reasonable level, such as by the adjudicator being part time; co-locating premises with another body (or within the Scottish Government); the adjudicator role being added to the responsibilities of an existing body (such as trading standards or relevant ombudsman). Another respondent did not comment on how the proposal should be funded but did state that the industry could not afford this and that it could halt Pubco investment. Stuart Ross did not say how it should be funded but repeated opposition to the proposal, and noted that the consultation did not outline what the costs would be. The FSB said that funding should reflect the experience of the legislation in England and Wales, stating—

“In its first year, the Adjudicator was overwhelmed by the number of enquiries (550) and the number of cases that have been accepted for arbitration (156). Unsurprisingly, this has led to complaints regarding the slow pace of settlements. Clearly, a potential Scottish Adjudicator will require the resources to do the job properly and swiftly. Thus, Scottish Government support and expertise will be essential. See: <https://www.gov.uk/government/news/pubs-code-adjudicator-data-reveals-significant-activity-in-first-year-of-new-law>”

Equalities

What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation?

Two hundred and sixty-five respondents answered this question, as follows—



Note that no respondents thought there would be any negative impact on equalities.

Positive

Ninety-eight respondents (37%) who answered this question thought there would be some positive impact on equality (75 respondents, 28%, thought a positive impact, and 23 respondents, 9%, thought a slightly positive impact). Several respondents who explained their answer gave reasons about fairness more generally (such as increasing rights and fairness for pub tenants) rather than referring to any of the characteristics protected by the Equality Act 2010. There were also some who were surprised that poverty was not included in the list of protected characteristics and thought poorer areas may be more affected by the proposal. Other reasons given included that—

- businesses free of the tie would be able to expand and employ more people, increasing the chances of employment for those with protected characteristics;
- fairer practices in the sector would be good for everybody, including those in equality groups;
- breaking the tie, and monopoly of pub ownership, would open up the sector to wider parts of society;

- the proposal promotes fairness for all and does not discriminate;
- older tenants may be under less pressure as a result;
- it could encourage more diverse pubs; and
- the proposal may lead to more employment of young people.

Sean Smith, who felt there would be a slightly positive impact, stated—

“Fewer costs on rent arrangements means pubs will be able to spend a greater amount of money catering for those with disabilities or other minorities. This could include disabled toilets and disabled access, gender neutral toilets, facilities for pregnant women or indeed space for people based on religion, gender or sexual orientation if need be.”

Neutral

One hundred and forty-one respondents, 53% of those who answered this question, thought the proposal would have a neutral impact on equalities. Most of the reasons given were similar, that the proposal would have no impact, positive or negative, on equality issues and was not relevant. One anonymous individual suggested that a gender impact assessment could be carried out.

Unsure

Twenty-six respondents (10% of those who answered this question) were unsure, however only three of those explained their answer. Of those, one questioned whether publicans would be aware of the equalities legislation, and another anonymous individual (ID 60236741) stated—

“In theory there should be no impact. However it's impossible to tell how the adjudicator will react and what cases will involve equality issues. For example a female licensee could bring forward a case that she is being unfairly dealt with for gender reasons.”

Question 13: In what ways could any negative impact of the Bill on equality be minimised or avoided?

One hundred and thirty-three respondents answered this question (despite the fact that no respondents thought the proposal would have a negative impact on equality groups). A large number of responses stated that they were not sure or that the proposal would have no negative impacts or that the question was not relevant. Some restated opposition to the overall proposal. There were also a number of responses which answered this question by outlining ways to mitigate negative effects of the Bill in general, rather than specifically addressing equality issues and people with protected characteristics. Examples of this were respondents who suggested mitigating impacts by—

- allowing time between the Bill being passed and it coming into force, to allow companies to adjust;

- using the adjudicator to help draft contracts between landlords and tenants to ensure compliance with the Bill;
- ensuring that Pubcos did not penalise their partners and find other ways to increase costs as a result of the proposal; and
- allowing adjudicator decisions to be challenged by judicial review.

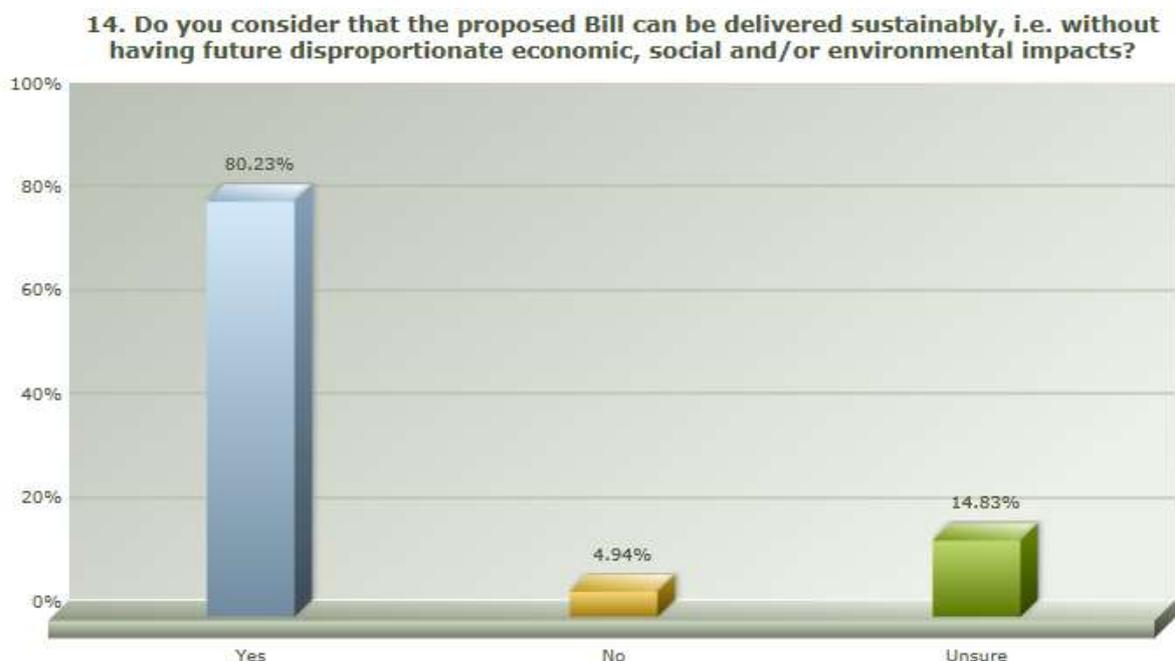
Stuart Ross suggested mitigating actions for what he saw as negative effects of the Bill, rather than equalities issues, including: deleting the MRO clause; introducing a parallel code for loan ties; avoiding floor-level thresholds; and conducting further research. An anonymous individual (ID 53078519) stated that loopholes in the England and Wales Act must be closed so they cannot be exploited by Pubcos, giving the example of the Act only applying to leases longer than five years.

Of those who did suggest how potential negative impacts on equality could be avoided, the suggestions included—

- carrying out regular scrutiny of the Code and Adjudicator;
- carrying out a full EQIA (and gender impact assessment);
- not licensing establishment seeking a narrow clientele; and
- assessing the impact of the legislation in England and Wales.

Sustainability of the proposal – question 14

Two hundred and sixty-three respondents answered this question, as follows—



Proposal delivered sustainably (yes)

A large majority, 211 respondents, 80% of those who answered this question, thought the Bill could be delivered sustainably. Reasons given included that—

- there would be a positive social and economic impact now and in the future for tied pub tenants, improving their wellbeing;
- a flourishing growing pub trade (and fewer closures) would support the wider economy including tourism as well as local community, with pubs often being meeting places and community hubs;
- it would encourage competition and allow more businesses to open and thrive (including smaller breweries);
- it would prevent vulnerable pub tenants being exploited and help deliver fairer principles of a civilized society;
- there would be a positive social impact because people would drink smaller amounts of craft beers rather than mass produced lagers and also drink less in pubs than they do at home; and
- it would boost local employment via more locally produced beers being produced.

Sean Smith stated that the proposal was sustainable as Pubcos could afford it, and social and environmental impacts would be positive as a result of more locally-produced beers being available and more people visiting their local pub. CAMRA made detailed comment on this aspect of the proposal, and quoted from the annual reports of some Pubcos (including Punch and Greene King) which did not suggest any significant unsustainable impacts following the introduction of the legislation in England and Wales. Chris Reid commented that—

“The rate at which pubs across the country have closed over the past years is alarming. The result is not only hardship for business owners and unemployment, but is much wider in terms of the social effect on rural locations and the erosion of the community spirit, that is so often focused on the local bar. Buildings have been left derelict and empty, where once stood venues full of harmony, hope and happiness. City venues have been replaced with soulless, faceless and generic xerox reproductions of characterless behemoth entities, where cheap beer and frozen food have driven out the very essence of the public house. Over the past two years, based on research compiled by the trade, tied tenancy pubs were 62 times more likely to close than a free of tie premise.”

Proposal not delivered sustainably (no)

A small minority of respondents, 13, 5% of those who answered this question, thought the proposal could not be delivered sustainably. Other views were that pubs would close as a result of lack of investment/support by Pubcos, or that Pubcos would be forced to close, with negative impacts on jobs and communities.

Several Pubcos argued that the proposal could not be delivered sustainably. Punch Taverns stated that tenanted pubs close at half the rate of free houses and that the proposal would accelerate tenanted closures and negatively affect communities. Heineken UK also warned of closures, job losses and

community impacts due to the reduction of investment in the pub sector that the proposal would cause.

Unsure

Thirty-nine respondents, 15% of those who answered this question, were unsure whether the proposal could be delivered sustainably. Only 13 of those offered any explanation of their answer. Of those, reasons included that—

- care would be needed in terms of possible impacts on health and social behaviour;
- more evidence from the rest of the UK was needed;
- it would depend on how the proposal/adjudicator was funded; and that
- it would depend on implementation.

Councillor Natasha Murphy stated—

“I think with funding potentially being tight the costs will need to be reviewed. They will need to determine if the ongoing costs can be minimised and that the advantages to the public outweigh the financial burden.”

One respondent asked if tenants would receive compensation for previous unfair contractual arrangements.

General

Question 15: Do you have any other comments or suggestions on the proposal?

One hundred and twenty-four respondents answered this question. Many of the responses reiterated comments made in answer to other questions (either in favour or in opposition to the proposal).

Benefits and future of the pub sector

Several comments were made about the benefit the proposal could have on the pub sector, and about the sector's future. One anonymous individual (ID 56227044) stated that pubs are better for the community compared to supermarkets (i.e. people drinking socially rather than drinking at home, perhaps alone). Another anonymous individual (ID 59868357) stated that if the aim was to save pubs from going out of business then other strategies were required, such as examining the competition from supermarkets and other drink outlets.

Views of the C&C Group

One anonymous individual (ID 57488882) commented on the position and views of the C&C Group, a drinks manufacturer, marketer and distributor which includes the Tennents brand—

“I suggest the argument is very one sided at present and there must be a clear investigation into the relationship of the C&C group (Tennents) with this proposal. Why are they publically supporting it? Why are they advertising it in the trade press? The brewery loans offered by companies such as C&C are as much of an issue in restricting choice in the current market. Investigate more and speak to people who will provide a balanced argument.”

Member’s Bill process and consultation

The Pubco Hawthorne Leisure Ltd commented on the member’s bill process, stating it was “pretty flabbergasted” that the proposal had got this far, adding “we would like to understand how proposals like this can be stopped at an earlier stage given that there is almost zero evidence that it is required.” The SBPA and Punch Taverns raised questions regarding the possibility of multiple responses being able to be made by single individuals/organisations (presumably in a bid to influence the outcome unfairly) and also stated that “It is also critical that responses are fairly weighted to reflect the constituent businesses or interest each organisation official represents.” One respondent said the consultation could have been simpler and easier to understand, while another said the consultation was user-friendly, well written and easy to understand.

One respondent said the Pubcos should be consulted in developing the bill. A couple of others stressed the need for the proposal to be taken forward quickly. Another stated that on-line questionnaires should not be relied upon to consult and that customers and communities must be involved, such as via a local authority-issued information sheet.

Other comments

Other comments/suggestions made included—

- the need for wider legislation on unfair contracts;
- that the USA is beginning to follow/put in place similar proposals;
- that the smoking ban should be re-examined as it has caused many pub closures;
- that supermarkets should be prevented from selling alcohol;
- that Pubcos should have to compensate past and present tenants;
- that legislation in Scotland needs to be stronger than that in England and Wales;
- that work should be done regarding community ownership of pubs;
- that more details are required on how the bill will adhere to competition law to safeguard a free and fair market;
- that breweries should be included, not just Pubcos;
- that the Scottish Government commissioned study was flawed; and
- that guest beer and real ale rights should be introduced for tied tenants.

On the issue of the Scottish Government’s commissioned research, one anonymous individual (61576462) stated—

“The Scottish Government 'study' published in late 2016 was one of the worst documents produced by any government in the UK in recent times; an appalling waste of money. The aims of the study and the methodology were deliberately skewed in order to inhibit evidence-gathering of abuse by pubcos of licensees; the sample of tied pubs was so small that in no way would it be considered robust or representative. That document should be put to one side as it does not stand up to any degree of scrutiny.”

Both CAMRA and Ray Turpie called for the introduction of guest beer rights for tenants. CAMRA stated—

“In addition to a Market Rent Only option for tenants of pub companies owning 100 or more pubs in Scotland, CAMRA would also like to see the introduction of Guest Beer Rights (real ale) for the tenants of the same pub companies ... CAMRA is advocating the inclusion of Guest Beer Rights in a Scottish Pub Code, as this would allow tied tenants to stock a cask-conditioned guest beer of their choosing, rather than being restricted by the range and prices of the stocking lists of their pub companies. CAMRA consider it fair for this provision to apply only to those companies owning 100 or more tied pubs in Scotland.”

SECTION 4: MEMBER'S COMMENTARY

Neil Bibby MSP has provided the following commentary on the results of the consultation, as summarised in sections 1-3 above.

I would like to record my thanks to all those who participated in the consultation on this proposal and the Non-Government Bills Unit for their support throughout this process.

I welcome the contributions from all respondents, including those opposed to the proposal, and the constructive debate about tied pub reform generated by the consultation.

The consultation has found that there is significant discontent with existing arrangements for tied pubs in Scotland and overwhelming support for new legislation to better regulate the sector, specifically a new statutory Pubs Code and independent adjudicator.

In total, 275 responses were received, of which an overwhelming majority supported my proposal. 93% of respondents indicated that they were supportive, including 87% of respondents who said they were 'fully supportive'.

The proposal is supported by a broad coalition of organisations, including the Scottish Licensed Trade Association (SLTA), the Campaign for Real Ale (CAMRA), the Federation of Small Businesses in Scotland (FSB Scotland), the Scottish Tourism Alliance, the GMB trade union, the Scottish Trades Union Congress and the Scottish Co-operative Party.

Forty-six of the responses to the consultation were submitted by organisations, of which 78% supported the proposal.

In its submission, the Scottish Tourism Alliance stated that many pubs are struggling because "pub companies are taking more than is fair or sustainable from tied licensees' profits". Forced to buy beer from their Pubco landlords instead of on the open market, licensees can pay up to 50% more and they may already pay above market value for rents.

The SLTA describes Pubco landlords as "creating an unfair, uncompetitive marketplace which leads to a serious effect on the economy and the fragile health of the licensed trade industry". It stated that new legislation is required "to ensure that pub tenants get a fair deal and that they are no worse off than a free-of-tie licensee" and they call specifically for a "robust code of conduct" and adjudicator to ensure that Pubcos do not "exploit" pub tenants.

FSB Scotland said that "these proposals would lead to a win-win situation for tied tenants and their customers". They envisage that "tied tenants will be able to invest more in their businesses and take home higher personal incomes, while customers will benefit from lower prices and a wider range of products – including craft beers from microbreweries".

Only a small minority of respondents opposed the proposal. These responses mostly included pub companies and their representative body, the Scottish Beer and Pub Association (SBPA).

I am aware of the recent Scottish Government 'Scoping Study' on the pub sector, which stated that it did not find evidence to suggest that the tied sector was being unfairly disadvantaged. However, as a number of respondents to my own consultation have observed, only twenty-five outlets participated in the Scottish Government survey. As detailed in Section 2, this consultation received submissions from 35 commercial organisations, including pubs and pub companies and 29 individuals who identified as current or former pub tenants or workers. There were also 49 indications of support made through the SLTA, the trade body for licensees.

In addition, a good number of responses appear to have been submitted by those with a working knowledge of the sector, although not all identified themselves as such.

This comprehensive consultation exercise has, in my view, done far more to engage the pub sector than the Scottish Government's survey. The case for change has been made abundantly clear. The status quo is no longer tenable. The current voluntary code, introduced by the SBPA, which represents pub companies not tenants, does not provide adequate protection for tenants. This is the view which has been expressed by both tied tenants themselves and organisations from within the sector, including the SLTA. The Scottish voluntary code is similar to that used in England and Wales before the UK Government deemed that legislation was necessary. Whilst I accept that there are some differences between the pub industry in Scotland compared to England and Wales, the majority of issues which prompted the UK Government to legislate, and which have been explored throughout this summary, also exist in Scotland.

The consultation also invited views on specific steps which could be taken as part of a potential Bill. Again, responses received indicate that there is support for each of these measures.

85% of respondents were supportive of establishing a Market Rent Only option, including 75% who were fully supportive.

86% of respondents also said a Pubs Code and Market Rent Only option should apply to all Scottish pubs.

87% were supportive of an Adjudicator imposing financial penalties to enforce the Tied Pubs Code, including 78.6% who were fully supportive.

Finally, when asked about the financial implications of the Bill, 68% of respondents replied that there would be a reduction in costs for tied pub tenants. One of the principal reasons for bringing forward this Bill was to alleviate cost pressures on tied pub tenants caused by unfairness in the market.

The consultation has demonstrated that there is widespread support for my proposal and that the status quo is viewed as placing tied pub tenants at a disadvantage. It is for these reasons that I have lodged my final proposal for a Tied Pubs (Code and Adjudicator) Bill and will now seek cross-party support.

Consultation responses

All publishable responses can be seen on the website www.protectourpubs.scot which displays each response with a sequential number, Smart Survey identification (ID) number (automatically assigned by Smart Survey) and the name or status of every response, for ease of reference. A list of responses attributable to organisations and individuals can be found at the Annexe.

Organisations

- Admiral Taverns
- Beath Brewing
- Campaign for Real Ale (CAMRA)
- Cardwell Inn
- Coadys Bar
- Darroch Bar Ltd
- Federation of Small Businesses (FSB) Scotland
- GMB Scotland
- Greene King plc
- Harvie's Bar
- Hawthorn Leisure Ltd
- HEINEKEN UK
- Huddersfield CAMRA
- Law Brewing Company
- Monty's Bar
- Pubs Advisory Service
- Punch Taverns
- Regent Pubs & Clubs Ltd
- Scottish Beer and Pub Association
- Scottish Co-operative Party
- Scottish Licensed Trade Association
- Scottish Property Federation
- Scottish Tourism Alliance
- Scottish Trades Union Congress
- Staging post
- Steel Coulson Ltd
- T J Scotland Ltd
- Tennent Caledonian Breweries
- Toppies Lounge Limited
- West Dunbartonshire Licensing Board
- Wintersgills Bar.

Individuals

- A McReary
- Alan Tindall
- Alexander Bourhill
- Allan McLean
- Allan Merry
- Andrew McAlpine
- Andrew McFayden
- Anthony Ian Andrews
- Archie McOustra
- Ben Procter
- Catherine Stihler MEP
- Chris Reid
- Christine Midgley
- Christopher Cassidy
- Christopher Elder
- Claudia Beamish MSP
- Councillor Natasha Murphy
- Craig Hunter
- Craig Speirs
- Daniel Johnson MSP
- David Archibald
- David Parr
- David Ritchie
- Desmond Coyne

- Dr James Lynch
- Dr Stig Walsh
- Drew Connelly
- Duncan John Irving
- Duncan Sinclair
- Elaine Smith MSP
- Eric Manclark
- Evelyn Tett
- Gary Smith
- George McVie
- Gerard Lamarra
- Gerry Mooney
- Gilbert C Wilson
- Gordon Mckinley
- Gordon McRae
- Graham Blaikie
- Harry Cartmill
- Iain Gray MSP
- Iain McMillan
- Ian Close
- Ian Clydesdale
- Ian McDougall
- James Geekie
- James Kelly MSP
- James Leary
- James Pinkerton
- Jane Buckley
- Jane McLaren
- Johann Lamont MSP
- John Ferguson MBE
- John Martin
- John McEwan
- John McMaster
- Jon Hughes
- Joseph Gallacher
- Karen Mellstrom
- Kevin Montgomery
- Kezia Dugdale MSP
- Kusum Sood
- Kyle Gunn
- Laurence Brunton
- Marian Mead
- Mark Griffin MSP
- Mark Houston
- Martin Hyman
- Mary Fee MSP
- Michael Campbell
- Michael Denholm
- Michael Doherty
- Michael Halls
- Moira McGraw
- Neil Findlay MSP
- Nicholas Mark Thirgood
- Norman Wilson
- Patrick Harvie MSP
- Patrick Kenny
- Pauline McNeill MSP
- Peter & Sheila Fogg
- Peter Holmyard
- Philip Barnes
- Ray Turpie
- Richard Buckland
- Richard Leonard MSP
- Rob McLaren
- Robert Newlands
- Robert W Rowe
- Ronnie Saez
- Rory Munro
- Roy Robertson
- Ruby Rosling-Sibley
- Russell Buchan
- Sean Kennedy
- Sean Smith
- Simon Morbey
- Stefan Weidt
- Stephen Docherty
- Stuart Ross
- Terry Kelly
- Thomas Jenkins
- Thomas Moles
- Thomas Nimmo
- Tony Dhesi
- Tony Gerrard
- W.H.Brown
- Walter MacLellan
- William Thom.