

TIED PUBS (SCOTLAND) BILL AT STAGE 2

SOCIETY OF INDEPENDENT BREWERS

Thank you for your letter dated 21 December 2020 on the Tied Pubs Bill. SIBA welcomes the decision by the Scottish Parliament to consider the Bill at Stage 2 in February.

In your letter you have specified a number of questions which we have addressed below.

Lengthening implementation and review timescales

It is an immensely challenging time for pubs and for small breweries, who have been badly impacted by the Covid-19 pandemic and the restrictions placed on the hospitality sector in response. It is likely to take a considerable amount of time for the sector to begin to recover. Therefore, it is understandable in these circumstances that the Scottish Government should consider the impact of the pandemic when planning for the introduction of new policies.

The draft Bill specifies that the Scottish Government should lay regulations for a Pubs Code and to appoint an Adjudicator within a year of the Bill receiving Royal Assent. In the current circumstances the Scottish Government should set out in advance a clear and achievable timetable which takes account of impact of the Covid pandemic.

In the draft Bill, Scottish Ministers must carry out a review of the Code and the Adjudicator's performance as soon as practicable after the 31st March in the year following the year in which the Adjudicator is appointed. After which there must be reviews every two years. While accepting that Covid will have a lasting impact, it is important that the Scottish Government takes stock as soon as feasible after the introduction of the Code. One of the publicised shortcomings of the 2015 Act in England and Wales was the review process and it is important to hold regular reviews.

Removal of elements of retrospection

The draft Bill proposes allowing former tenants access to the Adjudicator as a response to tenants' concerns in addressing disputes following the ending of a tenancy. While it is right to consider whether this should continue in perpetuity, it is important to ensure there is a window of opportunity for tenants' concerns to be fully addressed. The Committee should also ensure that tenants are not significantly disadvantaged through any delays in implementing the Pubs Code and Adjudicator.

Levies

It is fair that the levy should be proportionate. The draft Bill follows the model used in the 2015 Act, determining the levy by reference to the number of tied pubs owned and to the number of cases referred to the Adjudicator. This seems to be a fair and equitable way to fund the Code and the Adjudicator.

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Thresholds

Given the nature of the Scottish market where there are a number of PubCos with relatively small numbers of tied pubs compared to England and Wales it is sensible not to limit it to those with more than 500 pubs. Consideration should be given by the Committee to whether a suitable level is needed for the Scottish market with a minimum floor to exclude those with a small number of pubs.

Court appeal process

This is an issue that the Committee should consider during Stage 2 to ensure that there is an appropriate appeals process.

Guest beer agreement

SIBA supports the Committee's objectives that the Guest Beer Agreement should help small independent brewers to access a greater number of pubs in Scotland. We would like to see, as a result on this provision, more local beer from small independent breweries being stocked in Scottish pubs offering better choice for consumers.

We share the concerns of the Committee that as the draft Bill is currently written, it is unclear that this provision would meet the policy objective that has been specified. The Committee should consider the mechanism that will enable the tenant to access a Guest Beer as well as defining what a Guest Beer is.

Currently it is not clear how the tenant will be able to access a Guest Beer and whether they will have to purchase this through their PubCos or will be free to source a beer themselves and have it directly invoiced to the pub. We would encourage the Committee to consider how this will be defined.

The Committee should also give consideration to the implications of tech services charges. Large lead brewers can charge to use their tech services (such as dispensing equipment and beer lines) which may be a barrier to sourcing local Guest Beers.

In defining the Guest Beer, SIBA would recommend to the Committee that consideration is given to amending the Bill to insert a reference to small independent breweries. The UK Government's Small Breweries' Relief (SBR) scheme provides a useful reference point. SBR is only open to breweries that produce less than 60,000 hectolitres a year and therefore provides a definition which could be used for this Bill.

SIBA would suggest the following amendment to 4 (3) (a) (i):

sell to the pub's customers, at a price of the tenant's choosing, at least one **beer produced by a small brewery (defined as eligible for Small Breweries' Relief)** chosen by the tenant.

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MRO option

It is welcome that the Bill provides the tenant the opportunity to take up an MRO option if they choose to do so. This avoids some of the issues reported with the England and Wales MRO process such as the significant price trigger. This has meant that tenants often cannot purchase the beer they wish to through their PubCos for fear of activating the price trigger within the Pubs Code leading to an MRO.

As SIBA stated in its consultation response, there is evidence that the creation of the MRO option in England and Wales has led to licensees have a better understanding of the options open to them and the risks and rewards of the different models and helped them to negotiate different terms or levels of support. By extending this option to Scotland, tied pubs there may see similar results.

Income of tied pub tenants

SIBA does not have further information on the exact income that tied pub tenants receive and others are in a better position to provide this information to the Committee.

Reasons for divergence of views

The Committee's Stage 1 Report considers why this may be the case and SIBA does not have further information on this issue.

Level of investment put on hold

SIBA does not have any evidence on this issue.

Support received by non-tied pub tenants

SIBA is not in a position to provide any evidence on this issue.

MRO option in other sectors

SIBA is not aware of this option being applied in other sectors.