

INFORMATION TO BE RELEASED

Document 1

From: [redacted]
Sent: 12 November 2020 09:58
To: Minister for Business, Fair Work and Skills
Cc: Burgess WG (George); Higgins K (Kate)
Subject: RE: EMBARGO Stage 1 report Tied Pubs (Scotland) Bill
Attachments: Tied Pubs Bill - Committee Stage 1 report recs and conclusions - Nov 2020.docx

[redacted]

For the purposes of the meeting, I attach a short document setting out all of the Committee's recommendations.

I have started to draft a CSCL submission. [redacted]

I hope this is helpful for the discussion.

Regards.

[redacted]

Document 2(Attachment referred to in the email above)

**SUMMARY OF THE ECONOMY, ENERGY AND FAIR WORK COMMITTEE
RECOMMENDATIONS AND CONCLUSIONS**

Income for tied pub tenants

The Committee heard evidence from tenants who are trying to live on low incomes. The Committee believes that both the pub owner and the tenant should receive a fair financial return. The Committee received conflicting information on tenant income and felt that small sample sizes and dated information made much of evidence on income levels limited at best. The Committee would have hoped to receive full and transparent data which would have aided scrutiny. It may be that there is inconsistency between the income guaranteed by different pubowning businesses, but insufficient information was provided by supporters of the bill and its opponents, to gain a full picture. The Committee suggests that independent analysis is needed in this area.

Pub closures and tenant turnover

The Committee found the supporting data on pub closures, business failure and tenant tenure lacking. It is clear that pubs are closing, but the extent to which this can be attributed to problems with tied tenancy agreements was unclear. Further independent analysis of tenant tenure would be useful in assessing how widespread an issue it is and to what extent the failure of tied tenancies contributes to the overall rate of pub closure in Scotland.

The Pubs Code in England and Wales

The Committee notes that implementation of the Small Business, Enterprise and Employment Act has been considered problematic. The Policy Memorandum notes that the Bill has tried to avoid problems experienced in implementing the 2015 Act, but the outcome of the UK Government's review of the code has yet to be published, making it difficult to fully understand these issues or fulfil the Bill's aim of avoiding problems experienced in implementing the 2015 Act in England and Wales.

The Committee notes the different operating landscape in Scotland, which also makes direct comparison with England and Wales challenging.

Threshold

The Committee believes that should the Bill progress, the issue of threshold should be further considered at Stage 2.

The Voluntary Code in Scotland

The Committee found a lack of awareness of the voluntary code and suggest that more could be done to make tied pub tenants aware of existing measures, including mechanisms for arbitration. The Committee also notes that 6 out of 10

pub-owning businesses are currently signed up to the voluntary code and encourages the remaining 4 companies to also adhere to the code. The Committee recommends that the Scottish Government works with the pub industry and the Scottish Pubs Governing Body to better advertise the voluntary code in Scotland among tied-pub tenants if the Bill does not progress.

Scottish Pubs Code Adjudicator

The Committee notes evidence that should the Bill progress, appointment of an impartial adjudicator is essential to the successful implementation of the Bill.

Court appeal process

Should the Bill progress, the Committee recommends that the appeal process is revisited at Stage 2.

Arbitration

Several tenants raised issues regarding their contractual tied agreements through the Committee's survey, yet the Committee was surprised to learn that there have been no referrals to the PIRRS and PICA services for low-cost arbitration. The Committee believes that it is in both the tenant and the pub owners' best interests to minimise the turnover of tenants and encourage productive working relationships. The Committee therefore believes that the pub-owning companies must do more to make tenants aware of their options for dispute resolution.

Market Rent Only (MRO)

The Committee notes that the Market Rent Only option is the most contentious aspect of the Bill in the eyes of witnesses who opposed it. On the other side of the argument, an overwhelming majority of respondents to the Committee's survey supported this proposal and considered it important in improving the situation for tenants.

Guest beer agreement

There is consumer demand for craft beer and the Committee is supportive of measures which would help small independent brewers access a greater number of pubs and in turn support local production, jobs and economies. However, it is unclear to the Committee whether this would prevail from the guest beer agreement provisions as drafted.

Investment by pub-owning companies

The Committee felt that the arguments and investment figures presented on both sides were selective. The Committee believes that businesses desire profit and while profit can be made through tied tenancies, they will continue.

Covid-19 investment

The Committee notes that Covid-19 has put enormous pressure on the pub industry; opening hours and pub capacity have been heavily curtailed, and periods of closure have led to months without sales or customers. Regardless of operating model, the Committee welcomes the measures that pub owners, tenants, managers and staff have taken to adhere to guidelines and make pubs as safe as possible.

Other investment

The Committee notes that the Bill does not directly discuss investment, but the majority of witnesses suggested that investment by both pub owners and tenants would be impacted in some way. The Committee notes evidence that suggests continued investment in tied pubs in England and Wales despite the 2015 Act and wonders whether the gloomier predictions may have been overstated despite the likelihood of change, should the Bill progress.

The Committee also notes that investment in repairs and maintenance of the pub was one of the main areas of friction between pub-owning businesses and tied tenants. On the one hand, the Committee heard that pub owners would be less likely to invest in tied pubs and their improvement if an MRO option was available to tenants, bringing uncertainty to the length of tenure in contracts. On the other, the Bill's supporters said that there would be greater opportunities for tenants to invest themselves or to negotiate improved terms for investment by the pub owners. Again, the polarised nature of the debate, and lack of recent and reliable data, has made the Committee's consideration of the issues raised by the Bill difficult.

Financial Memorandum

The Committee notes that there are differing views on the likely workload for the Pubs Code Adjudicator, and therefore also the overall set-up and running costs outlined in the Financial Memorandum.

Conclusions

The Committee believes that pubs perform an important role in Scotland's communities and make significant contributions to the Scottish economy. It is important that customers have choice in the establishments they visit and the products they buy. Pub owners and those managing and operating pubs should feel that tied-pub arrangements are mutually beneficial.

The Committee believes that both the pub-owner and tenant should get a fair return and some of the income levels cited by tenants seemed very low. However, in the absence of independent analysis, members felt that small sample sizes and dated information made much of the evidence limited. It was difficult for the Committee to assess the range of income being received by different tenants and how this related to the pubs overall profits. The Committee would have found it helpful to have more information on this point.

A majority of the Committee remained frustrated by the polarised arguments and

the lack of complete, robust and independent data upon which to evaluate the potential impact of the proposed Bill on pub owners and tenants. That majority were unconvinced that sufficient evidence was presented to the Committee to suggest that the problems described were large-scale or that there were adequate grounds to warrant legislative interference in contractual agreements.

However, a minority of the Committee agrees that there is an imbalance in the relationship between pub tenants and landlords and that the provisions in the Bill would help to ensure a fairer balance of risk and reward. They note that the Bill is supported by the majority of those who responded to the Committee's call for evidence, in particular a broad coalition of workers, tenants, and consumers. The establishment of a statutory code, an independent adjudicator and a market only rent option are welcome and overdue measures.

The Committee, whilst commending the intent behind the Bill, is not agreed that legislation is required, and does not support the general principles of the Bill.

Document 3

From: [redacted]
Sent: 17 November 2020 11:07
To: Minister for Business, Fair Work and Skills
Cc: Cabinet Secretary for Economy, Fair Work and Culture; DG Economy; Quinlan K (Kevin); Burgess WG (George); Higgins K (Kate); Communications Economy; [redacted]
Subject: Tied Pubs Bill - briefing for meeting with Neil Bibby MSP, 18 Nov 2020
Attachments: Tied Pubs Bill - briefing for meeting with Neil Bibby MSP, 18 Nov 2020.docx

Hello [redacted]

I attach briefing for tomorrow's meeting with Mr Bibby on the Tied Pubs Bill.

The CSCL draft has not yet been cleared but I will send that to you as soon as possible.

Regards.

[redacted]

[redacted]

BRIEFING FOR THE MINISTER FOR BUSINESS, FAIR WORK AND SKILLS

Document 4

What	Tied Pubs (Scotland) Bill – meeting with Neil Bibby MSP
Where	Conference call: Number - [redacted] Host Code – [redacted] Guest code – [redacted]
When	15:30-16:00, Wednesday 18 November 2020
Key message(s)	<ul style="list-style-type: none">• Interested to see the Economy, Energy and Fair Work Committee’s Stage 1 report on the Bill.• Carefully considering the report in advance of the debate.
Who	Neil Bibby MSP, who introduced the Tied Pubs (Scotland) Bill on 3 February. [redacted] will also be on the call.
Why	Meeting requested by Mr Bibby prior to the Stage 1 debate for the Tied Pubs (Scotland) Bill on 26 November.
Supporting official (incl. mobile no.)	[redacted] , Food and Drink Division, [redacted]
Media Handling	N/A
Social Media	N/A
Briefing contents	Annex A - Summary Annex B – Tied Pubs (Scotland) Bill – overview Annex C - Economy, Energy and Fair Work Committee Recommendations and Conclusions Annex D – Key facts on pub sector and impact of UK legislation Annex E – Neil Bibby MSP – Evidence to the Committee

SUMMARY

This meeting has been requested by Neil Bibby MSP in advance of the Stage 1 debate for the Tied Pubs (Scotland) Bill on 26 November. The Bill was introduced by Mr Bibby.

In their Stage 1 report, the Committee concluded that “whilst commending the intent behind the Bill, [the Committee] is not agreed that legislation is required, and does not support the general principles of the Bill”. The Committee agreed the final recommendation by majority decision.

A majority of the Committee were frustrated by the polarised arguments and the lack of complete, robust and independent data upon which to evaluate the potential impact of the proposed Bill on pub owners and tenants. The majority were unconvinced that sufficient evidence was presented to the Committee to suggest that the problems described were large-scale or that there were adequate grounds to warrant legislative interference in contractual agreements.

A minority of the Committee agreed that there is an imbalance in the relationship between pub tenants and landlords and that the provisions in the Bill would help to ensure a fairer balance of risk and reward. They considered the establishment of a statutory code, an independent adjudicator and a market only rent option to be welcome and overdue.

Lines to Take

- Interested to see the Economy, Energy and Fair Work Committee’s Stage 1 report on the Bill.
- Carefully considering the report in advance of the debate.
- Recognise the polarity of views on this issue and the difficulty in obtaining independent evidence. This is challenging in terms of forming a Government view.
- Interested to hear Mr Bibby’s views on the Committee report.

TIED PUBS (SCOTLAND) BILL – OVERVIEW

The Small Business, Enterprise and Employment Act 2015 was passed by the UK Parliament. The Act ensures that some tied pub tenants in England and Wales are covered by a statutory Pubs Code. The code is governed by a Pubs Code Adjudicator (PCA). The Act applies to those who have tenancies with pub-owning businesses that own 500 or more tied pubs.

The Tied Pubs (Scotland) Bill largely replicates the UK legislation and focuses on the following components, whilst leaving the detail of the Scottish Pubs Code to secondary legislation:

- Requirement for a Pubs Code and Adjudicator;
- The underpinning regulatory principles;
- The functions and powers of the Adjudicator;
- Funding and support for Adjudicator;
- A process for arbitrating on disputes; and
- Requirement in the Code for a Market Rent Only lease option

The Bill seeks to go further than the UK legislation in some areas, such as:

- The two overarching principles of the UK legislation are the fair and lawful dealing by pub-owning businesses in relation to their tied tenants and that tied pub tenants should be no worse off than if they were not subject to any tie. The Scottish Bill adds a third principle: “that any agreement between a pub-owning business and a tied-pub tenant should fairly share the risks and rewards amongst the parties.” Additionally, the Bill requires the Adjudicator to carry out the Adjudicator’s functions consistently with all three principles.
- The Bill is broader in scope in that all tied tenants are covered. The UK legislation only applies to tenants who have agreements with those pub-owning businesses who own 500 or more tied pubs (i.e.. the 6 larger pub-owning businesses in England and Wales).
- There is an automatic right for tenants to exercise the Market Rent Only (MRO) option whenever they choose. The UK legislation includes certain conditions and trigger points that need to be met before the MRO can be requested
- A new ‘guest beer’ arrangement means that tenants will have the right to stock at least one beer of their choosing beyond any tied arrangement

Other divergences from the UK legislation are:

- A more flexible approach to the establishment of the Adjudicator, suggesting that it could form part of the remit of an existing post-holder and without the need for a deputy (reflecting the relative smaller size); but with an enhanced

appointment process resulting in the appointment being subject to a resolution in Parliament. This process is generally used for more significant roles such as the Human Rights Commissioner and the Auditor General

- Shorter review periods (2 years rather than 3) for the Code and the Adjudicator's performance
- Ability for former tied tenants to submit disputes for arbitration under the Code in respect of leases that have recently ended
- A simplified arbitration process that has less conditions and criteria, permits referrals from pub-owning businesses (in addition to the tenant), and enables the Adjudicator to arbitrate directly.

ECONOMY, ENERGY AND FAIR WORK COMMITTEE RECOMMENDATIONS AND CONCLUSIONS

Income for tied pub tenants

The Committee heard evidence from tenants who are trying to live on low incomes. The Committee believes that both the pub owner and the tenant should receive a fair financial return. The Committee received conflicting information on tenant income and felt that small sample sizes and dated information made much of evidence on income levels limited at best. The Committee would have hoped to receive full and transparent data which would have aided scrutiny. It may be that there is inconsistency between the income guaranteed by different pubowning businesses, but insufficient information was provided by supporters of the bill and its opponents, to gain a full picture. The Committee suggests that independent analysis is needed in this area.

Pub closures and tenant turnover

The Committee found the supporting data on pub closures, business failure and tenant tenure lacking. It is clear that pubs are closing, but the extent to which this can be attributed to problems with tied tenancy agreements was unclear. Further independent analysis of tenant tenure would be useful in assessing how widespread an issue it is and to what extent the failure of tied tenancies contributes to the overall rate of pub closure in Scotland.

The Pubs Code in England and Wales

The Committee notes that implementation of the Small Business, Enterprise and Employment Act has been considered problematic. The Policy Memorandum notes that the Bill has tried to avoid problems experienced in implementing the 2015 Act, but the outcome of the UK Government's review of the code has yet to be published, making it difficult to fully understand these issues or fulfil the Bill's aim of avoiding problems experienced in implementing the 2015 Act in England and Wales.

The Committee notes the different operating landscape in Scotland, which also makes direct comparison with England and Wales challenging.

Threshold

The Committee believes that should the Bill progress, the issue of threshold should be further considered at Stage 2.

The Voluntary Code in Scotland

The Committee found a lack of awareness of the voluntary code and suggest that more could be done to make tied pub tenants aware of existing measures,

including mechanisms for arbitration. The Committee also notes that 6 out of 10 pub-owning businesses are currently signed up to the voluntary code and encourages the remaining 4 companies to also adhere to the code. The Committee recommends that the Scottish Government works with the pub industry and the Scottish Pubs Governing Body to better advertise the voluntary code in Scotland among tied-pub tenants if the Bill does not progress.

Scottish Pubs Code Adjudicator

The Committee notes evidence that should the Bill progress, appointment of an impartial adjudicator is essential to the successful implementation of the Bill.

Court appeal process

Should the Bill progress, the Committee recommends that the appeal process is revisited at Stage 2.

Arbitration

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Market Rent Only (MRO)

The Committee notes that the Market Rent Only option is the most contentious aspect of the Bill in the eyes of witnesses who opposed it. On the other side of the argument, an overwhelming majority of respondents to the Committee's survey supported this proposal and considered it important in improving the situation for tenants.

Guest beer agreement

There is consumer demand for craft beer and the Committee is supportive of measures which would help small independent brewers access a greater number of pubs and in turn support local production, jobs and economies. However, it is unclear to the Committee whether this would prevail from the guest beer agreement provisions as drafted.

Investment by pub-owning companies

The Committee felt that the arguments and investment figures presented on both sides were selective. The Committee believes that businesses desire profit and while profit can be made through tied tenancies, they will continue.

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Other investment

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The Committee believes that both the pub-owner and tenant should get a fair return and some of the income levels cited by tenants seemed very low. However, in the absence of independent analysis, members felt that small sample sizes and dated information made much of the evidence limited. It was difficult for the Committee to assess the range of income being received by different tenants and how this related to the pubs overall profits. The Committee would have found it helpful to have more information on this point.

A majority of the Committee remained frustrated by the polarised arguments and the lack of complete, robust and independent data upon which to evaluate the potential impact of the proposed Bill on pub owners and tenants. That majority were unconvinced that sufficient evidence was presented to the Committee to suggest that the problems described were large-scale or that there were adequate grounds to warrant legislative interference in contractual agreements.

However, a minority of the Committee agrees that there is an imbalance in the relationship between pub tenants and landlords and that the provisions in the Bill would help to ensure a fairer balance of risk and reward. They note that the Bill is supported by the majority of those who responded to the Committee's call for evidence, in particular a broad coalition of workers, tenants, and consumers. The establishment of a statutory code, an independent adjudicator and a market only rent option are welcome and overdue measures.

The Committee, whilst commending the intent behind the Bill, is not agreed that legislation is required, and does not support the general principles of the Bill.

KEY FACTS ON PUB SECTOR AND IMPACT OF UK LEGISLATION

Profile of Pub Sector in Scotland

There are 3 main pub ownership models in Scotland:

- **Tied:** lease between self-employed tenant and pub company landlord, with most including a supply agreement for beer, cider and services
- **Managed:** an individual manages the pub on behalf of the pub business and is a paid employee
- **Independent Free Trade:** pub is bought and managed by an individual

In Scotland, over 60% of pubs are independently owned and managed, with 17% operating on a tied model – this equates to around 750 pubs operating on a tied model (out of 4,000 pubs).

The industry in Scotland is naturally much smaller than in England, and its profile is quite different. In England, a larger proportion (39%) of pubs operate on a tied basis – equating to approx. 20,000 tied arrangements. In England, it is also much more common for that tied arrangement to include the tenant's home above the pub, an arrangement which is much less common now in Scotland.

Profile of pub owning companies in Scotland:

- Heineken/Star Bars (the largest with over 250 pubs)
- Green King/Belhaven (second largest around 150 pubs)
- Iona Pubs (part of the GI group – 100 pubs)
- Caledonian Heritable (60 pubs)
- Admiral Taverns (23 pubs)
- Hawthorn Leisure (90 pubs)
- Punch Pubs (40 pubs)

Situation in England and Wales

Since the legislation was implemented the number of cases/disputes being exercised in England and Wales is lower than expected. There are approx. 10,000 pubs within the scope of the legislation and **over the first 3 ½ years** the data shows:

Activating the Market Rent Only option (freeing tenants from the tie):

- 1,000 notices served to the pub companies for a MRO proposal
- 118 tenants took up the option and moved to market rent only agreement
- Equates to approx. 1% of the total within scope

Number of disputes lodged with the Adjudicator:

- 900 'enquiry' cases lodged (raising a concern/dispute)
- 372 accepted for arbitration (cases that met the criteria)
- Approx. 3% of total within scope

Based on this data, Neil Bibby has estimated the following potential case load for Scotland, **per annum**:

- 11 enquires
- 8 arbitration cases
- 23 Market Rent Only requests activated for consideration

Based on Mr Bibby's estimated Scottish data, if the pattern/trend from England were to be mirrored then around **6 tenants each year in Scotland would move to a Market Rent Only agreement**, with the majority entering into a new tied arrangement, likely with new negotiated terms.

ANNEX E

NEIL BIBBY MSP – EVIDENCE TO THE COMMITTEE

Mr Bibby gave evidence to the Committee on 1 September and then provided further written evidence on 11 September.

https://www.parliament.scot/S5_EconomyJobsFairWork/Inquiries/20200911_NB_OUT_EEFW_Stage1_Tied_Pubs.pdf

Mr Bibby confirmed for the Committee his commitment to the Bill and his continuing belief that legislation is proportionate and necessary to re-balance the relationship between landlord and tenant and to ensure that Scottish tenants are treated with fairness and have the same protection as their counterparts in England and Wales. He said that the evidence suggested that the Bill would help the pub sector and the economy.

On the question of evidence to support the Bill, Mr Bibby commented that the 2016 Scottish Government study heard from only 25 pubs, 10 of which were tied. He referred to a number of different reports and studies which he said supported the need for the Bill, or elements of it, e.g. House of Committee select committee reports that concluded self-regulation had failed; the 2014 CAMRA study that involved 200 Scottish tied pubs; and a CGA study commissioned by Tennent Caledonian (in fact, this was a 2014 CGA study on tied pubs commissioned by CAMRA and a separate 2015 paper from Tennents setting out the case for change in Scotland). Mr Bibby also referred to the consultation responses and Committee evidence sessions. His letter to the Committee of 11 September provides further supporting evidence.

Documents 5-11

Cabinet Sub-Committee on Legislation (CSCL) paper, drafts and covering emails - withheld

Document 12

From: [redacted]
Sent: 23 November 2020 10:01
To: Minister for Business, Fair Work and Skills
Cc: Cabinet Secretary for Economy, Fair Work and Culture; DG Economy; Quinlan K (Kevin); Burgess WG (George); Higgins K (Kate); [redacted]
Subject: Tied Pubs Bill - briefing for meeting with SLTA - 24 Nov 2020
Attachments: Tied Pubs Bill - briefing for meeting with SLTA - 24 Nov 2020.doc

[redacted]

As discussed, I attach light briefing for the SLTA meeting tomorrow.

Regards.

[redacted]

BRIEFING FOR THE MINISTER FOR BUSINESS, FAIR WORK AND SKILLS

Document 13

<i>What</i>	Meeting with the Scottish Licensed Trade Association to discuss the Tied Pubs (Scotland) Bill
<i>Where/ When</i>	12:30-13:00, Tuesday 24 November 2020 Conference call details: Number - [redacted](for external/Minister) Host Code – [redacted] (PO will host) Guest code – [redacted]
<i>Key Message(s)</i>	We are still carefully considering the Economy, Energy and Fair Work Committee report on Stage 1 of the Bill prior to the debate on 26 November.
<i>Who</i>	Scottish Licensed Trade Association (SLTA): <ul style="list-style-type: none">• Colin Wilkinson• Paul Waterson• Gavin Stevenson
<i>Why</i>	The Minister wrote to Colin Wilkinson of the SLTA on 18 November in response to an email of 29 October regarding the Tied Pubs (Scotland) Bill. The Minister offered a meeting.
<i>Supporting official</i>	George Burgess, Food and Drink Division – [redacted] [redacted], Food and Drink Division – [redacted]
<i>Media/ Social Media</i>	N/A
<i>Briefing contents</i>	Annex A – Summary Annex B – Tied Pubs (Scotland) Bill – overview Annex C - Economy, Energy and Fair Work Committee – Conclusions

AGENDA/ SUMMARY

- The SLTA provided a written submission to the Committee and Colin Wilkinson provided oral evidence on 18 August.
- The Scottish Licensed Trade Association (SLTA) strongly supports the Tied Pubs (Scotland) Bill and is pressing for Government to do so. It believes legislation is overdue in order to ensure tied pub tenants receive similar protections and rights to their counterparts in England and Wales. It considers that there is a place for tied pubs but a statutory code and regulatory body will greatly improve the relationship between pub companies and their tenants. Tied pub tenants should also have the right to end the tie at any time in return for a Market Rent Only (MRO) rent.
- **[redacted]**
- In its Stage 1 report, the Economy, Energy and Fair Work Committee concluded that “whilst commending the intent behind the Bill, [it] is not agreed that legislation is required, and does not support the general principles of the Bill”.
- Ministers are planning to support the Bill at Stage 1, subject to some amendments to the Bill at Stage 1 **[redacted]**

Lines to Take

- Find it helpful to hear the views of interested parties directly. Interested to hear the SLTA response to the Committee’s report, prior to the Stage 1 debate.
- The nature of the evidence at Stage 1, with such polarised views, has made decisions on the way ahead challenging. The Committee report reflects this difficulty. We are still considering the report and finalising our views.

TIED PUBS (SCOTLAND) BILL – OVERVIEW

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- The Bill is broader in scope in that all tied tenants are covered. The UK legislation only applies to tenants who have agreements with those pub-owning businesses who own 500 or more tied pubs (i.e.. the 6 larger pub-owning businesses in England and Wales).
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- A new ‘guest beer’ arrangement means that tenants will have the right to stock at least one beer of their choosing beyond any tied arrangement

Other divergences from the UK legislation are:

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BRIEFING FOR THE MINISTER FOR BUSINESS, FAIR WORK AND SKILLS

in Parliament. This process is generally used for more significant roles such as the Human Rights Commissioner and the Auditor General

- Shorter review periods (2 years rather than 3) for the Code and the Adjudicator's performance
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- A simplified arbitration process that has less conditions and criteria, permits referrals from pub-owning businesses (in addition to the tenant), and enables the Adjudicator to arbitrate directly.

ECONOMY, ENERGY AND FAIR WORK COMMITTEE - CONCLUSIONS

“The Committee believes that pubs perform an important role in Scotland's communities and make significant contributions to the Scottish economy. It is important that customers have choice in the establishments they visit and the products they buy. Pub owners and those managing and operating pubs should feel that tied-pub arrangements are mutually beneficial.

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However, a minority of the Committee agrees that there is an imbalance in the relationship between pub tenants and landlords and that the provisions in the Bill would help to ensure a fairer balance of risk and reward. They note that the Bill is supported by the majority of those who responded to the Committee's call for evidence, in particular a broad coalition of workers, tenants, and consumers. The establishment of a statutory code, an independent adjudicator and a market only rent option are welcome and overdue measures.

The Committee, whilst commending the intent behind the Bill, is not agreed that legislation is required, and does not support the general principles of the Bill.”

Document 14

Email discussions on possible amendments – withheld

Document 15

Email exchange on draft speaking notes and briefing ahead of stage 1 - withheld

BRIEFING FOR THE MINISTER FOR BUSINESS, FAIR WORK AND SKILLS

Document 16

From: [redacted]
Sent: 24 November 2020 09:14
To: Minister for Business, Fair Work and Skills
Cc: Cabinet Secretary for Economy, Fair Work and Culture; DG Economy; Quinlan K (Kevin); Burgess WG (George); Higgins K (Kate); [redacted]
Subject: Tied Pubs Bill - briefing for meeting with Neil Bibby MSP. 24 Nov 2020
Attachments: Tied Pubs Bill - briefing for meeting with Neil Bibby MSP. 24 Nov 2020.docx

Hi [redacted]

I attach briefing for the meeting today with Neil Bibby.

Annex C sets out where I believe we have reached on possible amendments. [redacted]

Please let me know if you have any questions.

Regards.

[redacted]

BRIEFING FOR THE MINISTER FOR BUSINESS, FAIR WORK AND SKILLS

Document 17

What	Tied Pubs (Scotland) Bill – meeting with Neil Bibby MSP
Where	Conference call: Number - [redacted] (for external/Minister) Host Code – [redacted] (PO will host) Guest code – [redacted]
When	12:15-12:30, Tuesday 24 November 2020
Key message(s)	<ul style="list-style-type: none">• Have considered the Committee report and Government is minded to support the Tied Pubs (Scotland) Bill subject to some amendments at Stage 2.
Who	Neil Bibby MSP, who introduced the Tied Pubs (Scotland) Bill on 3 February. [redacted] is also expected to be on the call.
Why	Meeting requested by the Minister prior to the Stage 1 debate for the Tied Pubs (Scotland) Bill on 26 November.
Supporting official (incl. mobile no.)	George Burgess, Food and Drink Division, [redacted] [redacted], Food and Drink Division, [redacted]
Media Handling	N/A
Social Media	N/A
Briefing contents	Annex A - Summary Annex B – Tied Pubs (Scotland) Bill – overview Annex C – Possible amendments for Stage 2 Annex D - Economy, Energy and Fair Work Committee - Conclusions Annex E – Neil Bibby MSP – Evidence to the Committee

SUMMARY

This meeting has been requested by the Minister in advance of the Stage 1 debate for the Tied Pubs (Scotland) Bill on 26 November. The Bill was introduced by Mr Bibby.

In their Stage 1 report, the Committee concluded that “whilst commending the intent behind the Bill, [the Committee] is not agreed that legislation is required, and does not support the general principles of the Bill”. The Committee agreed the final recommendation by majority decision.

On balance, Government has decided to support the Bill, subject to certain amendments at Stage 2. The purpose of this meeting is to advise Mr Bibby of Government’s intentions and to discuss the amendments that Government are proposing for Stage 2.

Lines to Take

- Have been considering the Committee report and other evidence in detail.
- As I said last week, the decision about the way forward has been a difficult one because of the polarity of views and the difficulty in obtaining independent evidence.
- On balance, Government is minded to support the Bill in order to ensure a fair and balanced landlord/tenant relationship in the pub sector in Scotland.
- This support is subject to amendments being made at Stage 2 to address some issues we have with the drafting of the Bill.

TIED PUBS (SCOTLAND) BILL – OVERVIEW

The Small Business, Enterprise and Employment Act 2015 was passed by the UK Parliament. The Act ensures that some tied pub tenants in England and Wales are covered by a statutory Pubs Code. The code is governed by a Pubs Code Adjudicator (PCA). The Act applies to those who have tenancies with pub-owning businesses that own 500 or more tied pubs.

The Tied Pubs (Scotland) Bill largely replicates the UK legislation and focuses on the following components, whilst leaving the detail of the Scottish Pubs Code to secondary legislation:

- Requirement for a Pubs Code and Adjudicator;
- The underpinning regulatory principles;
- The functions and powers of the Adjudicator;
- Funding and support for Adjudicator;
- A process for arbitrating on disputes; and
- Requirement in the Code for a Market Rent Only lease option

The Bill seeks to go further than the UK legislation in some areas, such as:

- The two overarching principles of the UK legislation are the fair and lawful dealing by pub-owning businesses in relation to their tied tenants and that tied pub tenants should be no worse off than if they were not subject to any tie. The Scottish Bill adds a third principle: “that any agreement between a pub-owning business and a tied-pub tenant should fairly share the risks and rewards amongst the parties.” Additionally, the Bill requires the Adjudicator to carry out the Adjudicator’s functions consistently with all three principles.
- The Bill is broader in scope in that all tied tenants are covered. The UK legislation only applies to tenants who have agreements with those pub-owning businesses who own 500 or more tied pubs (i.e.. the 6 larger pub-owning businesses in England and Wales).
- There is an automatic right for tenants to exercise the Market Rent Only (MRO) option whenever they choose. The UK legislation includes certain conditions and trigger points that need to be met before the MRO can be requested
- A new ‘guest beer’ arrangement means that tenants will have the right to stock at least one beer of their choosing beyond any tied arrangement

Other divergences from the UK legislation are:

- A more flexible approach to the establishment of the Adjudicator, suggesting that it could form part of the remit of an existing post-holder and without the need for a deputy (reflecting the relative smaller size); but with an enhanced appointment process resulting in the appointment being subject to a resolution

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in Parliament. This process is generally used for more significant roles such as the Human Rights Commissioner and the Auditor General

- Shorter review periods (2 years rather than 3) for the Code and the Adjudicator's performance
- Ability for former tied tenants to submit disputes for arbitration under the Code in respect of leases that have recently ended
- A simplified arbitration process that has less conditions and criteria, permits referrals from pub-owning businesses (in addition to the tenant), and enables the Adjudicator to arbitrate directly.

TIED PUBS (SCOTLAND) BILL - POSSIBLE AMENDMENTS FOR STAGE 2

[redacted]

ECONOMY, ENERGY AND FAIR WORK COMMITTEE - CONCLUSIONS

“The Committee believes that pubs perform an important role in Scotland's communities and make significant contributions to the Scottish economy. It is important that customers have choice in the establishments they visit and the products they buy. Pub owners and those managing and operating pubs should feel that tied-pub arrangements are mutually beneficial.

The Committee believes that both the pub-owner and tenant should get a fair return and some of the income levels cited by tenants seemed very low. However, in the absence of independent analysis, members felt that small sample sizes and dated information made much of the evidence limited. It was difficult for the Committee to assess the range of income being received by different tenants and how this related to the pubs overall profits. The Committee would have found it helpful to have more information on this point.

A majority of the Committee remained frustrated by the polarised arguments and the lack of complete, robust and independent data upon which to evaluate the potential impact of the proposed Bill on pub owners and tenants. That majority were unconvinced that sufficient evidence was presented to the Committee to suggest that the problems described were large-scale or that there were adequate grounds to warrant legislative interference in contractual agreements.

However, a minority of the Committee agrees that there is an imbalance in the relationship between pub tenants and landlords and that the provisions in the Bill would help to ensure a fairer balance of risk and reward. They note that the Bill is supported by the majority of those who responded to the Committee's call for evidence, in particular a broad coalition of workers, tenants, and consumers. The establishment of a statutory code, an independent adjudicator and a market only rent option are welcome and overdue measures.

The Committee, whilst commending the intent behind the Bill, is not agreed that legislation is required, and does not support the general principles of the Bill.”

NEIL BIBBY MSP – EVIDENCE TO THE COMMITTEE

Mr Bibby gave evidence to the Committee on 1 September and then provided further written evidence on 11 September.

https://www.parliament.scot/S5_EconomyJobsFairWork/Inquiries/20200911_NB_OUT_EEFW_Stage1_Tied_Pubs.pdf

Mr Bibby confirmed for the Committee his commitment to the Bill and his continuing belief that legislation is proportionate and necessary to re-balance the relationship between landlord and tenant and to ensure that Scottish tenants are treated with fairness and have the same protection as their counterparts in England and Wales. He said that the evidence suggested that the Bill would help the pub sector and the economy.

On the question of evidence to support the Bill, Mr Bibby commented that the 2016 Scottish Government study heard from only 25 pubs, 10 of which were tied. He referred to a number of different reports and studies which he said supported the need for the Bill, or elements of it, e.g. House of Committee select committee reports that concluded self-regulation had failed; the 2014 CAMRA study that involved 200 Scottish tied pubs; and a CGA study commissioned by Tennent Caledonian (in fact, this was a 2014 CGA study on tied pubs commissioned by CAMRA and a separate 2015 paper from Tennents setting out the case for change in Scotland). Mr Bibby also referred to the consultation responses and Committee evidence sessions. His letter to the Committee of 11 September provides further supporting evidence.

Document 18

Email exchange on CSCL paper/discussions –withheld

Document 19

Email exchange on CSCL paper/discussions –withheld

Document 20

Email exchange on CSCL paper/discussions -withheld

Document 21

From: [redacted] On Behalf Of Minister for Business, Fair Work and Skills

Sent: 24 November 2020 14:29

To: [redacted]

Cc: Minister for Business, Fair Work and Skills <MinisterBFWs@gov.scot>; Burgess WG (George)

<George.Burgess@gov.scot>; Higgins K (Kate) <Kate.Higgins@gov.scot>

Subject: FW: A letter from Punch Pubs & Co CEO, Clive Chesser

[redacted]

For awareness – checking if Mr Hepburn would be minded to speak with them ahead of stage 1 debate. Will let you know asap.

Thanks,

[redacted]

From: Hepburn J (Jamie), MSP

Sent: 24 November 2020 13:19

To: Minister for Business, Fair Work and Skills

Subject: Fwd: A letter from Punch Pubs & Co CEO, Clive Chesser

Can this be flagged to officials please

Sent from my iPad

Begin forwarded message:

[redacted]

Document 22

From: [redacted] behalf of Minister for Business, Fair Work and Skills
Sent: 24 November 2020 14:47
To: [redacted]; Minister for Business, Fair Work and Skills
Cc: Burgess WG (George); Higgins K (Kate)
Subject: RE: Tied Pubs Bill - Minister's note to Neil Bibby on Stage 2 amendments - 24 Nov 2020
Attachments: Tied Pubs Bill - Note from Mr Hepburn

Thanks [redacted], Mr Hepburn amended slightly and the note has now been issued (attached).

[redacted]

From: [redacted]
Sent: 24 November 2020 13:33
To: Minister for Business, Fair Work and Skills <MinisterBFWS@gov.scot>
Cc: Burgess WG (George) <George.Burgess@gov.scot>; Higgins K (Kate) <Kate.Higgins@gov.scot>
Subject: Tied Pubs Bill - Minister's note to Neil Bibby on Stage 2 amendments - 24 Nov 2020
Importance: High

Minister for Business, Fair Work and Skills

I attach a draft for Mr Bibby, as discussed.

Regards.

[redacted]

Document 23

From: [redacted]
Sent: 25 November 2020 07:15
To: Minister for Business, Fair Work and Skills
Cc: Cabinet Secretary for Economy, Fair Work and Culture; DG Economy; Quinlan K (Kevin); Burgess WG (George); Higgins K (Kate); [redacted]
Subject: Tied Pubs Bill - Stage 1 debate, 26 November - briefing
Attachments: Tied Pubs Bill - Stage 1 debate - opening speech - final draft - Nov 2020.docx; Tied Pubs Bill - Stage 1 debate - briefing - 26 Nov 2020.docx; URGENT: CSCLcorres(20)57 - Tied Pubs (Scotland) Bill - Agreement to Scottish Government Position for Stage 1 Debate - responses requested by close on Monday, 23 November 2020; Tied Pubs Bill Briefing 24112020.pdf; Tied Pubs Bill - Stage 1 debate - closing speech - 26 Nov 2020.docx

Hi [redacted]

I attach the following papers and links for the Tied Pubs (Scotland) Bill Stage 1 debate on 26 November:

- Opening speech
- Closing speaking notes
- Briefing
- CSCL paper
- Scottish Beer and Pub Association paper, 24 November
- Link to the Tied Pubs (Scotland) Bill
- Link to the Bill Policy Memorandum
- Link to the Bill Explanatory Notes

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

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

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

Please let me know if you have any questions.

Thanks.

[redacted]

**TIED PUBS (SCOTLAND) BILL
STAGE 1 DEBATE, 26 NOVEMBER 2020**

OPENING SPEECH (6 minutes)

Thank you, Presiding Officer.

I am pleased to open this Stage 1 debate for the Tied Pubs (Scotland) Bill. Thank you to Neil Bibby for bringing forward this Bill and encouraging discussion on important issues regarding the operation of the pub sector in Scotland.

Government had not gathered evidence to conclude that legislation in this area is necessary but it is incumbent on us to consider the facts.

I will begin by confirming Scottish Government's support for a successful pub sector in Scotland. Government recognises the real challenges currently faced by the whole industry. We are providing the support we can, to ensure that we can continue to enjoy the benefits and social opportunities offered by pubs when we emerge from the coronavirus crisis.

I know that Neil Bibby has been concerned for a number of years about what he considers to be inherent inequalities in the bargaining powers of landlords and tenants in the pub sector

which have led to an unfairness in the landlord/tenant relationship. He has sought to address these concerns with a Bill that follows the example of England and Wales and introduces a statutory pubs code and adjudicator in Scotland – and indeed goes further.

The provisions in the Bill would impose new requirements on pub companies responsible for around 750 pubs operating on a tied model. The Policy Memorandum confirms that the number of arbitration cases and Market Rent Only requests in Scotland as a result of this Bill is likely to be very low.

Fundamentally, we need to be convinced as a Parliament that legislation that puts demands on business is necessary before committing to taking it forward.

I have been clear that Government supports the broad intention of the Bill, of fair and equitable treatment within commercial agreements. That is something we aim to support across the business sector in Scotland. But as we said in the Memorandum submitted to the Committee in July, we need evidence about the nature and scale of the problem before committing to legislation. I have therefore been interested to see and listen to the arguments presented during the Stage 1 process.

Thank you to the Committee for their care in assessing the evidence and presenting a clear and thorough report.

Whilst I acknowledge the commitment of those who have engaged with the Stage 1 evidence process and I understand the strength of views, I share the Committee's frustrations about the polarised nature of the evidence. It has been difficult to come to a view when opinions have been so firm on either side of the argument.

I have carefully considered the Committee's report and noted their conclusion that whilst they commend the intent behind the Bill, they do not agree that legislation is required and do not support the general principles of the Bill. I recognise that some of the Committee did not support this view.

I have been listening carefully and the very strength of the views on either side of the argument tells me that not all is entirely well. I have also engaged with stakeholders in order to get first hand advice and I have taken a keen interest in developments such as the recent UK Government review of the Pubs Code and Adjudicator in England and Wales.

The challenge for Government is one of balancing the scale of the problem against the response required. The polarity of views and – to be frank – the lack of independent evidence that the Committee identified – has made Government's decision on this Bill a difficult one.

There are many strong landlord/tenant relationships in the pub sector and these will continue. But clearly there are also problems. And ultimately we need to ensure fairness. I am not convinced that the balance is right and that the voluntary code approach is working. Indeed, the lack of awareness of the voluntary code is a concern since that should be a useful governance tool.

The decision has been challenging but on balance, my conclusion is that Government should support this Bill, subject to amendments. The alternative of agreeing to implement the Committee recommendations would in all likelihood have involved significant work and led to a conclusion anyway that legislation is required.

The amendments that I seek involve issues such as lengthening implementation and review timescales for the code, removal of elements of retrospection so that past tenants cannot raise cases long after they have left the sector, and

ensuring levies on pub companies are proportionate. I want to ensure that this Bill works for the pub companies as well as for tenants.

In conclusion, I support the Tied Pubs (Scotland) Bill, subject to amendment, and its general principles. I look forward to our discussion today.

[783 words = 6 minutes]

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What	Tied Pubs (Scotland) Bill – Stage 1 debate
Where	Scottish Parliament Chamber
When	17:00-18:30, Thursday 26 November 2020
Key message(s)	<ul style="list-style-type: none"> Decision has been made, on balance, to support the Tied Pubs (Scotland) Bill, subject to amendments at Stage 2.
Who	N/A
Why	Scottish Parliament Economy, Energy and Fair Work Committee has published its Stage 1 report.
Supporting official (incl. mobile no.)	George Burgess, Food and Drink Division, [redacted] [redacted], Food and Drink Division, [redacted]
Media Handling	N/A
Social Media	N/A
Briefing contents	<p>Opening statement – attached separately</p> <p>Closing statement – attached separately</p> <p>Annex A – Tied Pubs (Scotland) Bill – overview</p> <p>Annex B - Economy, Energy and Fair Work Committee Recommendations and Conclusions</p> <p>Annex C – Proposed amendments at Stage 2</p> <p>Annex D – Q&A</p> <p>Annex E – Key facts on pub sector and impact of UK legislation</p> <p>Annex F – Scottish Government written submission on the Tied Pubs (Scotland) Bill, July 2020</p> <p>Annex G – Scottish Government research, 2016</p> <p>Annex H – Committee call for evidence</p> <p>Annex I – Scottish Beer and Pub Association paper, 24 November 2020</p> <p>Annex J – Voluntary code of practice in Scotland</p> <p>Annex K – UK Government Pubs Code and Pubs Code Adjudicator Statutory Review</p> <p>Annex L – Covid support for business and the hospitality sector and tourism</p> <p>Annex M - Other relevant issues including rents, the Heineken fine and ministerial meetings and correspondence</p>

BRIEFING FOR THE MINISTER FOR BUSINESS, FAIR WORK AND SKILLS

ANNEX A

TIED PUBS (SCOTLAND) BILL – OVERVIEW

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The Tied Pubs (Scotland) Bill largely replicates the UK legislation and focuses on the following components, whilst leaving the detail of the Scottish Pubs Code to secondary legislation:

- Requirement for a Pubs Code and Adjudicator;
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The Bill seeks to go further than the UK legislation in some areas, such as:

- The two overarching principles of the UK legislation are the fair and lawful dealing by pub-owning businesses in relation to their tied tenants and that tied pub tenants should be no worse off than if they were not subject to any tie. The Scottish Bill adds a third principle: “that any agreement between a pub-owning business and a tied-pub tenant should fairly share the risks and rewards amongst the parties.” Additionally, the Bill requires the Adjudicator to carry out the Adjudicator’s functions consistently with all three principles.
- The Bill is broader in scope in that all tied tenants are covered. The UK legislation only applies to tenants who have agreements with those pub-owning businesses who own 500 or more tied pubs (i.e.. the 6 larger pub-owning businesses in England and Wales).
- There is an automatic right for tenants to exercise the Market Rent Only (MRO) option whenever they choose. The UK legislation includes certain conditions and trigger points that need to be met before the MRO can be requested
- A new ‘guest beer’ arrangement means that tenants will have the right to stock at least one beer of their choosing beyond any tied arrangement

Other divergences from the UK legislation are:

- A more flexible approach to the establishment of the Adjudicator, suggesting that it could form part of the remit of an existing post-holder and without the need for a deputy (reflecting the relative smaller size); but with an enhanced appointment process resulting in the appointment being subject to a resolution

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in Parliament. This process is generally used for more significant roles such as the Human Rights Commissioner and the Auditor General

- Shorter review periods (2 years rather than 3) for the Code and the Adjudicator's performance
- Ability for former tied tenants to submit disputes for arbitration under the Code in respect of leases that have recently ended
- A simplified arbitration process that has less conditions and criteria, permits referrals from pub-owning businesses (in addition to the tenant), and enables the Adjudicator to arbitrate directly.

ECONOMY, ENERGY AND FAIR WORK COMMITTEE RECOMMENDATIONS AND CONCLUSIONS

Income for tied pub tenants

The Committee heard evidence from tenants who are trying to live on low incomes. The Committee believes that both the pub owner and the tenant should receive a fair financial return. The Committee received conflicting information on tenant income and felt that small sample sizes and dated information made much of evidence on income levels limited at best. The Committee would have hoped to receive full and transparent data which would have aided scrutiny. It may be that there is inconsistency between the income guaranteed by different pubowning businesses, but insufficient information was provided by supporters of the bill and its opponents, to gain a full picture. The Committee suggests that independent analysis is needed in this area.

Pub closures and tenant turnover

The Committee found the supporting data on pub closures, business failure and tenant tenure lacking. It is clear that pubs are closing, but the extent to which this can be attributed to problems with tied tenancy agreements was unclear. Further independent analysis of tenant tenure would be useful in assessing how widespread an issue it is and to what extent the failure of tied tenancies contributes to the overall rate of pub closure in Scotland.

The Pubs Code in England and Wales

The Committee notes that implementation of the Small Business, Enterprise and Employment Act has been considered problematic. The Policy Memorandum notes that the Bill has tried to avoid problems experienced in implementing the 2015 Act, but the outcome of the UK Government's review of the code has yet to be published, making it difficult to fully understand these issues or fulfil the Bill's aim of avoiding problems experienced in implementing the 2015 Act in England and Wales.

The Committee notes the different operating landscape in Scotland, which also makes direct comparison with England and Wales challenging.

Threshold

The Committee believes that should the Bill progress, the issue of threshold should be further considered at Stage 2.

The Voluntary Code in Scotland

The Committee found a lack of awareness of the voluntary code and suggest that more could be done to make tied pub tenants aware of existing measures, including mechanisms for arbitration. The Committee also notes that 6 out of 10

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pub-owning businesses are currently signed up to the voluntary code and encourages the remaining 4 companies to also adhere to the code. The Committee recommends that the Scottish Government works with the pub industry and the Scottish Pubs Governing Body to better advertise the voluntary code in Scotland among tied-pub tenants if the Bill does not progress.

Scottish Pubs Code Adjudicator

The Committee notes evidence that should the Bill progress, appointment of an impartial adjudicator is essential to the successful implementation of the Bill.

Court appeal process

Should the Bill progress, the Committee recommends that the appeal process is revisited at Stage 2.

Arbitration

Several tenants raised issues regarding their contractual tied agreements through the Committee's survey, yet the Committee was surprised to learn that there have been no referrals to the PIRRS and PICA services for low-cost arbitration. The Committee believes that it is in both the tenant and the pub owners' best interests to minimise the turnover of tenants and encourage productive working relationships. The Committee therefore believes that the pub-owning companies must do more to make tenants aware of their options for dispute resolution.

Market Rent Only (MRO)

The Committee notes that the Market Rent Only option is the most contentious aspect of the Bill in the eyes of witnesses who opposed it. On the other side of the argument, an overwhelming majority of respondents to the Committee's survey supported this proposal and considered it important in improving the situation for tenants.

Guest beer agreement

There is consumer demand for craft beer and the Committee is supportive of measures which would help small independent brewers access a greater number of pubs and in turn support local production, jobs and economies. However, it is unclear to the Committee whether this would prevail from the guest beer agreement provisions as drafted.

Investment by pub-owning companies

The Committee felt that the arguments and investment figures presented on both sides were selective. The Committee believes that businesses desire profit and while profit can be made through tied tenancies, they will continue.

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Covid-19 investment

The Committee notes that Covid-19 has put enormous pressure on the pub industry; opening hours and pub capacity have been heavily curtailed, and periods of closure have led to months without sales or customers. Regardless of operating model, the Committee welcomes the measures that pub owners, tenants, managers and staff have taken to adhere to guidelines and make pubs as safe as possible.

Other investment

The Committee notes that the Bill does not directly discuss investment, but the majority of witnesses suggested that investment by both pub owners and tenants would be impacted in some way. The Committee notes evidence that suggests continued investment in tied pubs in England and Wales despite the 2015 Act and wonders whether the gloomier predictions may have been overstated despite the likelihood of change, should the Bill progress.

The Committee also notes that investment in repairs and maintenance of the pub was one of the main areas of friction between pub-owning businesses and tied tenants. On the one hand, the Committee heard that pub owners would be less likely to invest in tied pubs and their improvement if an MRO option was available to tenants, bringing uncertainty to the length of tenure in contracts. On the other, the Bill's supporters said that there would be greater opportunities for tenants to invest themselves or to negotiate improved terms for investment by the pub owners. Again, the polarised nature of the debate, and lack of recent and reliable data, has made the Committee's consideration of the issues raised by the Bill difficult.

Financial Memorandum

The Committee notes that there are differing views on the likely workload for the Pubs Code Adjudicator, and therefore also the overall set-up and running costs outlined in the Financial Memorandum.

Conclusions

The Committee believes that pubs perform an important role in Scotland's communities and make significant contributions to the Scottish economy. It is important that customers have choice in the establishments they visit and the products they buy. Pub owners and those managing and operating pubs should feel that tied-pub arrangements are mutually beneficial.

The Committee believes that both the pub-owner and tenant should get a fair return and some of the income levels cited by tenants seemed very low. However, in the absence of independent analysis, members felt that small sample sizes and dated information made much of the evidence limited. It was difficult for the Committee to assess the range of income being received by different tenants and how this related to the pubs overall profits. The Committee would have found it helpful to have more information on this point.

BRIEFING FOR THE MINISTER FOR BUSINESS, FAIR WORK AND SKILLS

A majority of the Committee remained frustrated by the polarised arguments and the lack of complete, robust and independent data upon which to evaluate the potential impact of the proposed Bill on pub owners and tenants. That majority were unconvinced that sufficient evidence was presented to the Committee to suggest that the problems described were large-scale or that there were adequate grounds to warrant legislative interference in contractual agreements.

However, a minority of the Committee agrees that there is an imbalance in the relationship between pub tenants and landlords and that the provisions in the Bill would help to ensure a fairer balance of risk and reward. They note that the Bill is supported by the majority of those who responded to the Committee's call for evidence, in particular a broad coalition of workers, tenants, and consumers. The establishment of a statutory code, an independent adjudicator and a market only rent option are welcome and overdue measures.

The Committee, whilst commending the intent behind the Bill, is not agreed that legislation is required, and does not support the general principles of the Bill.

PROPOSED AMENDMENTS AT STAGE 2

[redacted]

Q&A

THE BILL

Why do you agree with the principle of the Bill?

We support the broad intention of the Bill of fair and equitable treatment within commercial agreements and want to see a successful tenanted pub sector in Scotland.

The Bill's Policy Memorandum estimates that the potential impact of the Bill in terms of enquiries, arbitration cases and Market Rent Only requests would be minimal. So why bother?

We considered this when deciding our approach on the Bill but concluded that there are clearly issues of imbalance within the landlord/tenant relationship in Scotland that need addressed now. Every business matters.

Do you agree that legislation in Scotland needs to go further than that in place in England and Wales?

We need legislation that is relevant for Scotland. I will be speaking to Mr Bibby about some amendments that we would like to see to the Bill, as introduced.

We are aware that UK Government are considering amendments to their legislation following the first statutory review of the Pubs Code and Adjudicator.

Do you think the UK legislation has been a success?

We are aware of some issues with the initial operation of the Code and the Adjudicator and we can learn from this.

We are aware that UK Government are considering amendments to their legislation following the first statutory review of the Pubs Code and Adjudicator.

What changes to the Bill are you looking for at Stage 2?

The following amendments are required if Government is to support the Bill:

- [redacted]

We will be scrutinising the Bill in detail with our lawyers and there may be further amendments which are likely to be minor and technical in nature.

Do you not believe the evidence given by the pub companies?

I am grateful to pub companies and others for their engagement with the Bill process and for the evidence they provided. I have made no secret of the fact that the polarised

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nature of the evidence made decisions on this Bill difficult but I recognise that there are strongly held views on both sides.

LACK OF EVIDENCE

If you are not convinced by the evidence provided at Stage 1 then why are you supporting this Bill? Legislation is supposed to be informed by evidence.

I agree with the Committee that it has been challenging to form a view on the Bill because of the nature of the evidence provided. In addition to the evidence to the Committee, I have taken into account the experiences of stakeholders and developments like the UK Government review and the Heineken case.

My decision is that, on balance, legislation is required.

EXISTING VOLUNTARY CODE

Why not just strengthen the voluntary code that already exists?

It is a voluntary code and Government cannot require pub companies to sign up for it, or interfere in its operation.

The current code does not appear to be making any difference. Some tenants are unaware of it and there is also confusion over the existence of the Governing Body. This does not inspire confidence.

Do we not need something akin to the Groceries Supply Code of Practice?

The Groceries Code regulates a very different relationship between supermarkets and their suppliers and the Code Adjudicator monitors and enforces the operation of the Code only in relation to the largest retailers.

SCOTTISH GOVERNMENT RESEARCH AND FURTHER ACTION

Did your own research not conclude that there were no particular problems within the tenanted sector in Scotland?

Our independent research in 2016 concluded that whilst there was some dissatisfaction with elements of the tied arrangement, for example the cost of beer and cider, there were benefits too and in general no part of the pub sector appeared to be unfairly disadvantaged.

The research was helpful but it was a relatively small sample size due to a lack of engagement from tenants.

Do you have plans for further research?

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There are no plans for further research.

GENERAL

Implementation of the legislation could take some time. What are you doing now to support this beleaguered sector?

Our absolute focus at this time is to help businesses survive and retain as much employment as possible – that is why we, and the UK Government, have put in place a range of measures to support pub tenants.

Have Ministers received a lot of representations from individuals or representative bodies about the Bill?

Ministers have received some correspondence about the Bill, or referring to the Bill, from both sides of the industry. This has not been significant.

Are the rent issues that emerged as a result of the Covid emergency an indication of unfair practices by pub companies?

At the start of Covid, I engaged with the SLTA and the Scottish Beer and Pub Association and their members regarding the position around rents and concluded that the majority of pub-owning businesses do appear to have taken reasonable steps to minimise the impact on their tenants. Some pub companies continue to review and extend their support.

KEY FACTS ON PUB SECTOR AND IMPACT OF UK LEGISLATION

Profile of Pub Sector in Scotland

There are 3 main pub ownership models in Scotland:

- **Tied:** lease between self-employed tenant and pub company landlord, with most including a supply agreement for beer, cider and services
- **Managed:** an individual manages the pub on behalf of the pub business and is a paid employee
- **Independent Free Trade:** pub is bought and managed by an individual

In Scotland, over 60% of pubs are independently owned and managed, with 17% operating on a tied model – this equates to around 750 pubs operating on a tied model (out of 4,000 pubs).

The industry in Scotland is naturally much smaller than in England, and its profile is quite different. In England, a larger proportion (39%) of pubs operate on a tied basis – equating to approx. 20,000 tied arrangements. In England, it is also much more common for that tied arrangement to include the tenant's home above the pub, an arrangement which is much less common now in Scotland.

Profile of pub owning companies in Scotland:

- Heineken/Star Bars (the largest with over 250 pubs)
- Green king/Belhaven (second largest around 150 pubs)
- Iona Pubs (part of the GI group – 100 pubs)
- Caledonian Heritable (60 pubs)
- Admiral Taverns (23 pubs)
- Hawthorn Leisure (90 pubs)
- Punch Pubs (40 pubs)

Situation in England and Wales

Since the legislation was implemented the number of cases/disputes being exercised in England and Wales is lower than expected. There are approx. 10,000 pubs within the scope of the legislation and over the first 3 ½ years the data shows:

Activating the Market Rent Only option (freeing tenants from the tie):

- 1,000 notices served to the pub companies for a MRO proposal
- 118 tenants took up the option and moved to market rent only agreement
- Equates to approx. 1% of the total within scope

Number of disputes lodged with the Adjudicator:

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- 900 'enquiry' cases lodged (raising a concern/dispute)
- 372 accepted for arbitration (cases that met the criteria)
- Approx. 3% of total within scope

Based on this data, Neil Bibby has estimated the following potential case load for Scotland, **per annum**:

- 11 enquires
- 8 arbitration cases
- 23 Market Rent Only requests activated for consideration

Based on Mr Bibby's estimated Scottish data, if the pattern/trend from England were to be mirrored then around **six tenants each year in Scotland would move to a Market Rent Only agreement**, with the majority entering into a new tied arrangement, likely with new negotiated terms.

SCOTTISH GOVERNMENT WRITTEN SUBMISSION ON THE TIED PUBS (SCOTLAND) BILL, JULY 2020

On 14 July, Scottish Government submitted a written submission on the Bill for consideration by the Economy, Jobs and Fair Work Committee. This is attached but a summary of the views provided is as follows:

We undertook our own independent research in 2016 which reported:

- In general and on balance, no part of the pub sector in Scotland appeared to be unfairly disadvantaged over others. But it noted:
 - Some dissatisfaction with the tied arrangement, mainly relating to the higher cost of beer, cider etc.; and disputes occurring around 'maintenance' (repairs, upkeep etc.) agreements
 - A recognition that a tied model was appealing to new entrants with limited experience or capital, and the associated benefits on a tied model (cheaper sky tv, wi-fi, marketing support etc.) were undervalued

Whilst this research was helpful it was a relatively small sample size due to a lack of engagement from tenants and, as such, has led us to remain neutral. Since then, we have received very few representations from tenants, or their representative bodies, calling for change therefore we have not had to form a view.

Position on the Bill:

1. Instinctively, public sympathy would typically align with the tenant rather than the (impersonal) landlord. Indeed, there is similar legislation which set up the Groceries Supply Code of Practice and Adjudicator (operating at a UK level) governing the relationship between the largest food retailers and their suppliers, and this legislation is widely supported, including by the Scottish Government. As such, we would typically support an overarching objective – as it is in this Bill - which is to strengthen the position of the tenant and redress the balance of power in the relationship.
2. There remains, however, a fundamental question and uncertainty as to the scale and nature of the problem that actually needs addressed, and whether legislation of this nature is proportionate. Given that the Bill also seeks to go further than the UK legislation there are a number of potential unknown consequences that ought to be explored and better understood before reaching a formal position, including:
 - i. Fully understanding the consequences of including all tenants within the scope of the legislation. In England and Wales only the largest 6 pub owning businesses are within scope (the threshold is set at those owning 500 or more tied pubs). The rationale was to exclude the large number of smaller family-operated pub owning businesses that exist in England and Wales. The Policy

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Memorandum identifies 10 businesses that would be within scope in Scotland, although acknowledges that other unknown smaller businesses could also be in scope. In theory, a small business owner owning one or two pubs would therefore be within scope.

- ii. Fully understanding the consequences of enabling a Market Rent Only option to be activated at any time without any conditions or triggers, particularly as this goes further than the UK legislation. Representatives from the pub-owning sector have signalled significant concern about this provision, citing a threat to proposed capital investment projects stemming from a perceived inability to plan with any certainty. It is possible that establishing a MRO option could encourage pub owners to offer shorter leases.
 - iii. Understanding the practical meaning of the 'third overarching principle' – tied arrangements offer a fair share of risk and reward.
 - iv. Seeking further information on thinking in relation to the establishment of a Scottish Pubs Code Adjudicator. The Policy Memorandum acknowledges that this role may not warrant a full time equivalent post, and the function could be added to an existing post-holder's remit. The Bill also includes a duty on the Scottish Government to appoint an Adjudicator within 1 year of the legislation coming into force, as well as draft the Code.
3. Minister met Neil Bibby and his team for a discussion on these and other points on 11 March. Whilst that meeting was constructive, no clarity was provided on these specific points. Minister has also had discussions with a range of wider stakeholders representing tenants and the pub-owning companies and, as expected, the views are polarised. Beyond those with an immediate direct interest there has been no wider representation.

Voluntary measures

4. There are also a number of existing industry-led measures that have emerged over the past few years, such as the voluntary Code of Practice (which is applicable in Scotland and also applies to those tenants and pub-owning businesses in England and Wales not within scope of the UK legislation) and which is overseen by a Governing Body. A new 'Scottish' Governing Body has recently been convened and met for the first time. Membership includes tenant and pub-owning representatives. There is also the low-cost arbitration process that pub-owning business offer their tenants in the form of the Pubs Independent Rent Review Scheme (PIRRS) (rent disputes) and Pubs Independent Conciliation and Arbitration Service (PICA) (other disputes) services. So far there has been no referrals to these services in Scotland, although pub-businesses have plans to make these more visible and accessible to Scottish tenants.

SCOTTISH GOVERNMENT RESEARCH, 2016

Independent research was undertaken in 2016, involving qualitative interviews with 25 tenants. Data was collected from 10 Independent Free Trade (IFT) outlets, 10 Fully Tied outlets, 5 Partially Tied outlets and 5 Pub Companies. No managed businesses agreed to take part in the self-completion survey. Fieldwork ran from February to July 2016.

In order to assist with the research, a Sounding Board was established. The Sounding Board comprised key stakeholders from the Scottish Licensed Trade, relevant trade associations and related businesses. The group's remit was not to discuss individual members' interests but to provide expert advice to the contractor.

The key conclusions from the research were as follows:

- Licensees appear to have a tacit understanding that the low cost of purchase/entry can link directly with the level of independence sought by tenants and pub owners. Respondents understood that there was a higher price to pay for freedom within their business.
- From a rental perspective, there appeared to be little disparity between Fully Tied and Partially Tied rents. Generally, most respondents confirmed a RPI rent review clause that provided a level of clarity to the review process. However, some individual respondents suggested value increases above this rate that may have the potential to cause future dispute. Overall, rents, within the context of the broader Scottish pub market, did not appear to be a significant cause of advantage or disadvantage.
- Regarding the key issue of beer purchasing behaviour and charges, there were some clear results. Compared to Fully Tied pubs, Partially Tied showed a tendency towards mixed supply from a wider selection of drinks wholesalers and suppliers, rather than remaining with their Pub Company supply. This suggested they were actively 'shopping around' to ensure the most competitive pricing for the products for which they are not tied. There was also some evidence of purchasing of 'local' products for all Fully Tied respondents, which bears out the responses from Pub Companies that they offered limited local/ regional flexibility options for all. Cheaper beer prices are available but there are trade-offs to be evaluated to realise this apparent advantage.
- Analysis of overall beer costs between all models showed a clear purchase price advantage for IFT businesses. The differentials between Partially Tied and Fully Tied costs were minimal. All pub models provided similar levels of historical price changes/ uplifts that were within expected parameters. Although beer costs remain an advantage for IFT pubs over both the Tied models, none of the Fully Tied respondents stated that overall beer pricing was a specific issue of dispute within the contract itself. The analysis

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suggests that the 3 cohorts are making similar levels of profits, albeit at a total trade level and not specifically beer.

- There was a perceived disparity of SCORFA benefits provided by the Pub Companies. IFT based responses on estimated annual expenditure. However, the fact that licensees of all types assigned tangible values to a number of key benefits of SCORFA underlined the fact that it was an advantage to the Tied licensee compared to IFT pub owners. However, a suggested lack of communication between tenants and Pub Companies could complicate these perceptions.
- Irrespective of overall satisfaction levels in relation to Pub Company/ licensee relationships, no respondents stated that they had looked to take their issues/ complaints to PICAS or PIRRS for resolution. The Pub Companies confirmed no referrals and a very limited number of formal complaints over recent times.
- Ultimately, where the focus is upon the apparent advantages and disadvantages of the pub tie itself, the key argument is costs. The cost centres include beer pricing, investment, rental and administration. The key areas are discounts achievable from separate negotiation with suppliers, comparison of the tied rent against a commercial rent, and the option of outright ownership. The equalised values assigned to SCORFA benefits are also a key area of consideration between Tied Pubs and IFT.
- The variations seen on key metrics at the end of the financial analysis journey make it difficult to conclude definitively that there is disadvantage in any particular model. The on trade is a complex market. Sample research can only give a general indication. The samples in the research itself returned such varied responses and data that it makes specific evidence based decisions extremely difficult.

The research concluded:

- In general and on balance, no part of the pub sector in Scotland appeared to be unfairly disadvantaged over others. But it noted:
 - Some dissatisfaction with the tied arrangement, mainly relating to the higher cost of beer, cider etc.; and disputes occurring around 'maintenance' (repairs, upkeep etc.) agreements
 - A recognition that a tied model was appealing to new entrants with limited experience or capital, and the associated benefits on a tied model (cheaper sky tv, wi-fi, marketing support etc.) were undervalued.

Whilst this research was helpful it was a relatively small sample size due to a lack of engagement from tenants. We have also received very few representations from tenants, or their representative bodies, over the years calling for change.

ECONOMY COMMITTEE CALL FOR EVIDENCE

Due to the impact of COVID-19 on the pub industry, the Economy, Energy and Fair Work Committee agreed to pause its call for views and evidence sessions on the Bill, which were due to take place in April. The call for views was re-opened over the summer recess, with a closing date of 14 July, and the committee plan to take oral evidence in August and September.

Oral evidence

On 18 August, the Committee took evidence from two panels:

Panel 1

Tom Stainer, Chief Executive, CAMRA
Keir Greenaway, Organiser, GMB Scotland
Jamie Delap, Scotland Regional Director, Society of Independent Brewers
Paul Waterson, Scottish Licensed Trade Association
Greg Mulholland, Campaign Director of the Campaign for Pubs, Chair, British Pub Confederation
Chris Wright, Head, Pubs Advisory Service

Key points:

Voluntary code

- Lack of legislation means an imbalance of power and an unfairness in the distribution of profit.
- Voluntary code did not work in England and Wales and is not working in Scotland.
- Lack of awareness of voluntary code and Governing Body.
- Tenants not speaking up about the issues because of fear of the consequences. CAMRA survey of 200 tenants showed vast majority wanted legislation.

Investment

- Tenant pays for any investment over time as it is added to the rent or wet rent. Where people paying fairer rent and prices, licensees themselves can invest with greater confidence.
- Bill and MRO option would allow the tenants to invest and encourage pub companies to offer more to tenants to prevent MRO requests.
- Access to capital investment is a benefit of being tied though it can't be relied upon. Can't get bank support if tied so only lender is the pub company. Myth that pub companies invest. Bill rebalances risk and reward.
- Most tenants would like chance to choose between pub company investment or commercial lender.

Guest beers

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- Want to be able to offer guest beers. Beerflex – all members in Scotland eligible but only 1000 barrels a year into Scotland.
- MRO option would be the best way of ensuring Scottish beer can be offered in pubs.

Impact on pubs

- Scaremongering by pub companies that the Bill would lead to closures. Fair share of profit will lead to fewer closures and more sustainability.

Improvement on England and Wales legislation? Future for tied pub sector?

- Need simple MRO option on face of Bill.
- Bill introduces risk and reward principle. Self-policing so no cost. Bill will re-balance the reward.
- Need clarity and communication to licensees, with an adjudicator with teeth.
- In England and Wales, we are seeing small entrepreneurial businesses buying pubs including small breweries. Thriving, with significant investment. Real opportunity for responsive owners in Scotland.
- Should not have a threshold, everyone should be treated fairly.
- Pub companies do sometimes operate non-tied pubs and provide investment and business support etc. to the tenant.

Costs

- Right that costs should be met by pub companies.

Panel 2

Lawson Mountstevens, Managing Director, Star Pubs & Bars
Emma McClarkin, CEO, British Beer & Pub Association
Edith Monfries, Chief Operating Officer, Hawthorn Leisure

Key points:

Investment and support

- More investment has come to Scotland since the legislation in England and Wales. Investment is being held back in Scotland because of possible legislation.
- We are investing heavily and not on a whim. Have plan for every pub, constantly checking local needs. Have made big investment in Scotland. £5m last year. Bill will force us to pause and reflect on investment. (Star Pubs)
- £2m investment on hold. Want to get on with that in Scotland. (Hawthorn)
- Bill threatens future in Scotland. We need certainty which is why the threat of the Bill damages investment. Need uncertainty of this Bill lifted.
- Tenants have welcomed our support through Covid including management of the destruction of beer, lower rents etc.
- Expecting many more pubs to close with Covid, and far more of those that are not tied. Doing everything to support pubs through crisis.
- There is absolute transparency with tenants. We need investment to grow businesses and to adapt.

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- Investment improves the business so tenants benefit. Rent is fixed so profit goes to the tenant.
- You don't invest millions on a whim, these are business decisions in partnership with tenants.

Voluntary code

- No need for legislation given the size of the sector and anticipated cases. We have voluntary code.
- The voluntary code in Scotland works well, now with a governance arrangement.
- Voluntary code communicated clearly and not invoked if not needed. Don't need statutory code.

Pressures on pub sector

- Pressures on businesses pre crisis. Bans on happy hours, smoking ban etc. all impact on hospitality. Covid on top of that means we have to look at what is needed to support the sector now.
- Pub businesses know the importance of good relationships and expect open discussions with tenants.
- We see creation of managed pubs as alternative to tied pubs as a result of the England and Wales legislation.
- Successful pubs need motivated individuals and investment. Tied pubs are a partnership model and the response to Covid confirms that. If that tie is lost, more pubs will close.
- All sorts of pressures have impacted on pubs even before Covid. Tax burden is huge. Business rates disproportionate. Want to have successful businesses and create jobs so need investment. The level of support for tied pubs, and investment, helps them to stay open. The risk is shared and that is why tied pubs so successful.

Income levels

- Seek minimum earnings of £25k for tenants (Hawthorn). It's in our interest that people make a good living.
- Average income £37k.

Extent of the tie

- 80% are free of tie on wines and spirits in Scotland. Core supply contracts are on beer and cider. Flex for regional craft or cask ales. (Star Pubs)
- Similar to Star Pubs arrangement. Respond to customer demand in individual pubs. Customers drive the business. (Hawthorn)

On 25 August, the Committee took evidence from the Minister for Business, Fair Work and Skills.

On 1 September, the Committee took evidence from Neil Bibby MSP. Mr Bibby confirmed for the Committee his commitment to the Bill and his continuing belief that legislation is proportionate and necessary to re-balance the relationship between landlord and tenant and to ensure that Scottish tenants are treated with fairness and

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have the same protection as their counterparts in England and Wales. He said that the evidence suggested that the Bill would help the pub sector and the economy.

Summary of written submissions

- The responses are split into 2 distinct camps: those who strongly support the Bill and those who strongly oppose
- Typical bodies who support are the Scottish Licensed Trade Association (SLTA); British Pubs Confederation (BPC); Campaign for Real Ale (CAMRA)
- Those who are against the Bill are the Pub Owning companies and the Scottish Beer and Pub Association (SBPA)
- The Federation of Small Business and the GMB Union both support the Bill – essentially citing the need for fair and equal treatment for tenants against the large corporate organisations
- 14 tenants of a pub-co have responded – 4 support the Bill but 10 oppose it. The 10 who oppose it appear to all be involved with Hawthorn Leisure and their responses were very similar.

Overview of key issues raised in written submissions

Support for the Bill

- Legislation in this area is necessary and long overdue in order to ensure tied pub tenants in Scotland receive similar protections and rights as their counterparts in England when dealing with the various Pub-Owning Companies. (SLTA)
- The tied pub model has a role to play, providing a low-cost entry point into their own business for tenants that may not have much capital, but there is a serious power imbalance between landlord and tenant, largely to the detriment of tenants. (SLTA)
- Important to stop the exploitation of small businesses (pub tenants) by huge corporations in what is a completely imbalanced relationship. (PBC)
- The current tied system in Scotland is unregulated by legislation and is creating an imbalance of power as pub companies develop a monopoly over the supply and cost of tied products, leaving licensees paying increasingly high prices for a restricted range of stock. Legislation is the only effective way to regulate the relationship. (CAMRA)
- All pub tenants, their representative organisations and campaigners actually want is a fair tenanted model – with a fair split of the profit of the pub between tenant and pub owner. (BPC)
- The protections this Bill should provide will go a long way towards helping the trade recover from Covid-19, protect employment and preserve the livelihood of small business owners. (SLTA)
- The creation of a regulatory body with powers to enforce a statutory pub code will greatly improve the relationship between pub-owning companies and their tenants. (SLTA)

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- There is no reason that the Bill should have any negative impact on investment in the pub sector in Scotland. A “Market Rent Only” option provides an incentive for pub owning companies to compete with the wider market both on “price of supplied goods” and “price of capital” for investments, resulting in a healthier, more sustainable, more competitive and more dynamic sector. (SLTA)
- It is vital that the Adjudicator is given a suitable level of power to act as a true deterrent to pub companies against breaking the Code. We need an Adjudicator in Scotland to have the power of being able to fine pub companies who break the Code so that the possibility that they might be given a large fine puts them off breaking the Code in the first place. This is in line with the Adjudicator for England and Wales, who has the power to impose fines of up to 1% of the turnover of the pub companies concerned. (CAMRA)
- There is no reason why a Pubs Code and Adjudicator would lead to significant loss of investment in the pub sector in Scotland. The provision of a Market Rent Only option will allow licensees substantially to increase their profits, and enable them to reinvest money in their businesses, boosting the quality of pubs in Scotland and the local economy. (CAMRA)
- Adjudicator should be funded by those that the Pubs Code seeks to regulate – namely pub owning companies operating in Scotland. (CAMRA)
- Allowing tenants to challenge rents and to have the option to avoid excessive tied price lists would allow more investment – and would see more publicans able to convince banks to lend money to invest in pubs. (BPC)
- Industry self-regulation under the voluntary Scottish code is not working and will not work, just as the voluntary code did not work in England and Wales. (CAMRA)
- The Scottish Pub Code, when written, should provide comprehensive protection for pub tenants. The development of the code’s detail is critically important and will require significant input from tenants and bodies such as the SLTA which represent the interests of tenants. (SLTA)
- In addition to Market Rent Only provisions, the Code should contain detailed provisions and guidance regulating some of the more egregious examples of poor conduct which have been widely reported as commonplace throughout the industry e.g. dilapidations & repair obligations, personal guarantees, tied product range, repair liabilities, opaque rent calculations. (SLTA)

Opposition to the Bill

- No evidence to show that legislation is needed in Scotland and its introduction would be detrimental to the sector and the wider Scottish economy. This was also the conclusion of the independent study commissioned by the Scottish Government and published on 6 December 2016. (SBPA).
- The Bill is seeking a solution to a problem that does not exist. The legislation proposes to introduce a Scottish Pubs Code that would cover only 17% of pubs in Scotland. This legislation will be costly and complex, trying to fix something that is not broken. This Bill introduces unnecessary red tape, complexity and bureaucracy onto the landlord and tenant partnership that is already constructive and working. (Star Pubs and Bars Ltd)

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- Consider the legislation to be an unnecessary and potentially damaging intervention in what is currently a well-balanced and equitable Scottish pub sector. (Trust Inns)
- Scotland has had far fewer instances of conflict between operators and pub-owning companies, largely due to the markedly different nature of the landlord-tenant relationships, and accompanying legal agreements in Scotland. (SBPA)
- This Bill will put investment, entrepreneurship and jobs at risk in Scotland at a time when the pub sector and the Scottish economy need them most. (Star Pubs and Bars Ltd)
- The Bill will present a real risk to investment in the industry. The Bill was bad for industry before the pandemic, but the problems the legislation will create will now likely be amplified due to the desperate need for investment. (SBPA)
- Closures in the tenanted and leased sector are less than half of that in independent free trade over the last 10 years. This illustrates that the issues impacting pubs and leading to closures is not due to the tied-partnership, but wider factors are resulting in the closure of premises across Scotland. (SBPA)
- The relationship between pub-owning companies and their tenant operators in Scotland is already strong. (SBPA)
- PubCos commit to reviewing and promoting the industry-leading Scottish Code of Practice launched in 2016. (SBPA)
- The independent free trade has on average less choice than those in tied partnerships. The legislation could actually see a reduction in number of available products and brands.(SBPA)
- The fundamental issues with the 2015 Act remain in this Bill, ensuring the imposition of poor UK legislation into Scottish legislation. (SBPA)
- The cost estimates included within the Financial Memorandum drastically underestimate the financial assets needed to set-up and run a Pubs Code and Adjudicator (SBPA)

List of respondents

- [SIBA, the Society of Independent Brewers](#)
- [Iain Taylor](#)
- [Ferry Cyrus](#)
- [Joe Ghaly](#)
- [Scottish Courts and Tribunals Service](#)
- [Gilmours Bar](#)
- [The Wheatsheaf](#)
- [Cleddans Bar](#)
- [The Railway Inn](#)
- [Scottish Licensed Trade Association](#)
- [Hawthorn Leisure Ltd](#)
- [Tennent Caledonian Breweries](#)
- [Star Pubs & Bars Ltd](#)
- [Federation of Small Businesses](#)
- [Campaign for Pubs](#)
- [Trust Inns Limited](#)
- [Punch Pubs & Co](#)
- [British Pub Confederation](#)

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- [CAMRA, the Campaign for Real Ale](#)
- [Scottish Co-operative Party](#)
- [Forum of British Pubs](#)
- [Admiral Taverns](#)
- [Scottish Beer & Pub Association](#)
- [Livingston Inn Ltd](#)
- [Queen Street Tavern](#)
- [The Bayview Bar](#)
- [Burts Bar](#)
- [Commercial Inn](#)
- [Victoria Bar](#)
- [G1 Group plc and Iona Pub Partnership](#)
- [The Braes](#)
- [Greene King](#)
- [GMB Scotland](#)

- [Group submission from pub directors \(Belhaven/ Greene King\)](#)
The following submission was sent by 3 people via a Scottish Co-operative Party Campaign. The individuals are listed at the bottom of the submission:
- [Scottish Co-operative Party Campaign](#)

The following submission was sent by 220 people. Those respondents who were happy for their names to be included in support are included at the bottom of the submission:

- [CAMRA Campaign](#)

An additional 21 people used the above submission as the basis for their comments.

SCOTTISH BEER AND PUB ASSOCIATION PAPER, 24 NOVEMBER 2020

The Scottish Beer and Pub Association submitted a paper – “Tied Pubs (Scotland) Bill: turning-off the investment tap and closing pubs” - to Scottish Ministers on 24 November. The paper sets out arguments for why the Bill should be opposed.

The **overview** of the paper is as follows:

“The Tied Pubs (Scotland) Bill is not evidence-based, and far from helping Scotland's pubs, if passed into law, the Bill will:

- pose a real danger to future, vital investment in the sector
- limit the entrepreneurship opportunities available to those hoping to run their own pub business
- create a significant disincentive for pub-owning businesses to invest in their pub estate as it removes the certainty and confidence required to make future investment decisions, which may lead to closures and job losses

As such, the Bill should be resoundingly rejected by the Scottish Parliament and help give our sector a much-needed lifeline.

The proposal comes at the very worst time for the sector. The focus of the pub companies since March has been ensuring the survival of their pubs through the pandemic. With positive news on a vaccine, companies are now looking forward to the recovery phase and deciding how best to utilise the investment funds they have available. If the Bill progresses to Stage 2, the additional uncertainty created would mean Scottish pubs will be significantly disadvantaged in comparison to those in other parts of the UK. Fewer pubs will reopen, fewer jobs will be retained and the Scottish sector's recovery will likely be much slower than the rest of the UK.

The Bill also seeks to introduce expensive, administratively arduous regulations on business at the worst possible time. It replicates and builds on the problematic legislation introduced for England and Wales in 2016, despite radically different market sizes and no evidence of a problem in Scotland. The Scottish Government would also be forced into the difficult tasks of writing the code and appointing an Adjudicator, who would need to be confirmed by a vote of the Scottish Parliament within 12 months.

The Scottish pub plays an invaluable role at the heart of local communities providing numerous social benefits whilst also contributing £1.15 billion to the Scottish economy every year and employing over 45,000 people across the country. The hospitality industry has faced many challenges before the pandemic, from changing consumer habits, to recruitment shortages and the pressures posed by taxation and regulation that disproportionately impact our sector, resulting in 20% of Scotland's pubs closing in the last ten years. To layer further regulation on the industry at this time would be devastating to the nation's pubs.

Tenants themselves have been speaking out against the Bill. Whilst MSPs may have received emails from CAMRA members urging them to support the legislation, the

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operators actually impacted by it have also been making it known they oppose the proposal.”

Conclusions/facts from the paper include:

- The Bill will destroy investment and force pubs to close.
- The Bill was, at best, poorly conceived before Covid-19 decimated the sector. Now, it is wholly reckless as it would inflict irreversible harm during the crucial rebuilding period, during which many pubs may struggle to reopen at all. Passing the Bill would play a material role in keeping many pubs closed - some for good.
- The Bill would remove the only low-cost entry point into owning and running a pub.
- Pubs already benefit from significant protections and access to an independent dispute resolution mechanism in the form of the Scottish Pubs Code.
- The industry doesn't want it: pub-owning companies and tenants have spoken out against the Bill.

VOLUNTARY CODE OF PRACTICE IN SCOTLAND

Introduction

The “Pub Sector – Scotland Code of Practice” (the voluntary code) is a British Beer and Pub Association code that describes the minimum requirements governing the operation of tied public houses in Scotland. The Code was put into place in 2016 and is supervised by the Pub Governing Body.

Individual companies are required to display the Code within the tenanted/leased section of their websites and ensure each of their tenants receive a copy. The Code sets standards for landlord companies regarding the interaction with tied tenants throughout the life of their relationship with the company. Individual sections describe industry requirements for:

- Letting of Premises
- Rent Reviews
- Agreement Renewal
- Interaction with Landlord
- Operation of AWP's
- Use of Flow Monitoring Equipment
- Complaints Procedure
- Surrender of Tenancy

Principles of the Code

1. Companies which subscribe to the Code agree to:
 - abide by its terms and to act at all times in the spirit with which the Code has been compiled;
 - act with integrity and honesty at all times and conduct business in a professional, fair and legal manner;
 - be transparent about their terms of business and other dealings, particularly any charges made or costs passed on and the way in which rent has been assessed;
 - offer contracts that are fair, reasonable and comply with all legal requirements;
 - deal with complaints in good time and fairly, in accordance with a clearly defined internal dispute mechanism and with access to independent dispute resolution, where appropriate, if such a mechanism fails to resolve the complaint.
2. The Code also places obligations on tenants to ensure that they are fully equipped to make informed commercial decisions. It includes requirements or recommendations for tenants to take independent professional advice.
3. The Code also sets out a requirement for prospective tenants to undertake training to ensure that they fully understand the implications of a pub tenancy.

Signatories to the Code

The following companies are signatories to the Code:

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Admiral Taverns Limited
Belhaven/Greene King plc
Hawthorn Leisure Limited
Punch Taverns plc
Star Pubs & Bars/Heineken UK Limited
Trust Inns Limited

Adherence to the Code and associated self-regulatory structures is a condition of membership of the Scottish Beer & Pub Association (SBPA)

**UK GOVERNMENT PUBS CODE AND PUBS CODE ADJUDICATOR
STATUTORY REVIEW**

In November 2020, the Department for Business, Energy and Industrial Strategy published the UK Government's report on the first statutory review of the Pubs Code and the Pubs Code Adjudicator.

The report concluded that, while the Pubs Code is consistent with the principles set out in the Small Business, Enterprise and Employment Act 2015, there are certain changes that may improve the operation of the Pubs Code and aspects of the PCA's functions which will require further consultation. The areas for action include to:

- consult on better access to information to help informed decision-making by prospective and existing tenants;
- explore improvements to the Market Rent Only process, such as in respect of restrictive timescales and to allow for meaningful negotiation, and consult on proposals;
- develop and consult on the creation of tailored dispute resolution rules to improve the arbitration process, and explore the scope for an alternative to the High Court as the arbitration appeal route; and
- ask the PCA to retain such evidence it may come across of persistent poor behaviour by pub-owning businesses where it considers its existing powers are insufficient to enforce the Pubs Code.

COVID SUPPORT FOR BUSINESS AND THE HOSPITALITY SECTOR AND TOURISM

Scottish Government support package

Scottish Government has already provided a package worth over £2.3 billion, including:

- Almost £900 million of non-domestic rates relief
- £1.3 billion business grants scheme
- £145 million package of targeted support for SMEs and the self-employed
- £30 million Creative, Tourism & Hospitality Enterprises Hardship Fund to support those businesses not in receipt of other grant funding.
- Up to £3 million to support those B&Bs with no business bank account
- £14m hotel support fund

Additional support of £48m to support employees and businesses impacted by the new restrictions and eligibility criteria. The business support funds will be administered by Local Authorities, providing one-off grants to businesses directly impacted by the restrictions implemented on 9 October 2020. Closed 3 November.

From 2 November, grants are available for every 4 week period of restrictions. As outlined in the Strategic Framework, grants of up to £3,000 are available for businesses required to close by law, and grants of up to £2,100 for businesses that remain open but are required by law to modify their operations.

We will continue to engage with businesses on a regular basis to understand their needs and press the UK Government to deliver for them.

Tourism Recovery Taskforce

The Scottish Tourism Taskforce was convened in June to advise on recovery plans. Co-chaired by the Tourism Secretary Fergus Ewing, and Business Minister Jamie Hepburn, the group's recommendations were published on 23 October and will be carefully considered by the Scottish Government. Paul Togneri from the Scottish Beer and Pub Association and Stephen Montgomery, multiple site operator and formerly of SLTA, are both members of the Taskforce, as is Willie Macleod of UK Hospitality.

The Recovery Taskforce published its recommendations on 23 October. These include priority rescue measures that should be undertaken by both the Scottish and UK Governments. Work is now ongoing to deliver those recommendations. Summary of priority recommendations:

For Scottish Government

BRIEFING FOR THE MINISTER FOR BUSINESS, FAIR WORK AND SKILLS

- Work with the sector to agree protocols for planning and financial compensation if further lock downs are required.
- Support to improve workplace safety and develop skills development package to retain talent and develop leadership skills
- Marketing support to boost visitor demand and increase visitor confidence at the right time
- Support a request to UK Government for temporary removal of Air Passenger Duty to boost route competitiveness if this can be aligned with longer term Scottish Government Climate Change ambitions
- Progress alternative options for robust Testing Regimes – to facilitate and drive international travel.
- Extend Business Rates Holiday for another year targeted at sectors and regions most impacted.
- Provision of additional targeted grant support and advice to tourism and hospitality business who have either not been able to trade at all or sufficiently well enough to generate enough revenue to see them through the coming 6-9 months of off season

For UK Government

- Tailored support for the tourism/hospitality sectors (beyond what is offered via the Job Support Scheme)
- Implement a permanent VAT reduction for hospitality and an extension to help the broader supply chain beyond March 2021.
- Reconsider removal of duty free.
- Investment for growth by reducing the cost of loans through the introduction of a government backed soft equity loan scheme.
- Review of taxation to support the sector through recovery.

General - Assessing the Impact

- We, along with VisitScotland, continue to gather information on how COVID-19 is affecting Scotland's tourism industry. This will inform future action to support recovery.
- The Scottish Tourism Emergency Response Group (STERG) continues to meet weekly to deliver our response to the pandemic.
- The Scottish Tourism Recovery Taskforce is building on that work and will assist with the ongoing reset of the sector

OTHER RELEVANT ISSUES INCLUDING RENTS, THE HEINEKEN FINE AND MINISTERIAL MEETINGS AND CORRESPONDENCE

Rent issues during Covid

During the height of Covid there was a campaign being led by the respective leadership bodies in Scotland and England (representing tenants) that all pub owning business should scrap rents whilst pubs continued to be closed.

[redacted]

Pubs Code Adjudicator (England and Wales) – Heineken fine

In October 2020, the Pubs Code Adjudicator in England and Wales published a report identifying multiple breaches of the Pubs Code by Star Pubs and Bars (Heineken) over a 3 year period and a failure on the part of the company to respond to opportunities to comply with the Code. Their actions served as a structural barrier to tenants pursuing a free-of-tie option.

The Adjudicator imposed a fine and conditions to ensure future compliance with the Code. Star Pubs were given 6 weeks to confirm how the recommendations would be implemented.

The Adjudicator described the report of her investigation as a game changer, demonstrating that the regulator can and will act robustly to protect the rights that Parliament has given to tied tenants. She will be holding discussions with all the companies she regulates following her findings about how they will ensure they are Code compliant.

Ministerial meetings and correspondence around the Bill and related issues

The Minister met or had a call with the following:

SLTA - 28 February 2019.

CAMRA - 20 March 2019.

Neil Bibby MSP and his team - 11 March 2020.

Scottish Beer and Pub Association - 2 April 2020 (meeting was primarily about Covid).

Scottish Beer and Pub Association - 15 May 2020 (meeting was primarily about Covid).

SLTA –15 May 2020 (meeting was primarily about Covid) and 24 November 2020

Greg Mulholland, Chair of the British Pub Confederation - 24 June 2020

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Meeting with Heineken in the Parliament – date not confirmed.

[redacted]

[redacted]

Chris Wright, Pubs Advisory Service – 9 October 2020

Neil Bibby MSP – 18 and 24 November 2020

Ministers have also had calls with representatives of the hospitality sector regarding licensing (not related to the Bill, but an example of more regular engagement with these bodies beyond just this Bill). Cabinet Secretary for Rural Economy and Tourism discussed the Bill with the Society of Independent Brewers (SIBA) on 20 August 2020.

Details of correspondence are as follows:

1 May 2020 email from SLTA to all MSPs regarding Covid and rent deferral and urging for reform of tied pub arrangements. (Draft reply to Stewart Stevenson on this with Ministers, 20 August.)

Email from Stewart Stevenson MSP regarding tied pub rents – 7 May. (Reply issued 21 August.)

Minister wrote to all the pub owning companies and to Cabinet Secretary for Communities and Local Government, Neil Bibby MSP and Oliver Mundell MSP on 11 June 2020 regarding support for pub tenants.

Letter of 22 June 2020 from Lawson Mountstevens, Managing Director of Star Pubs and Bars to Fiona Hyslop MSP regarding the company's response to Covid and also concerns about the Tied Pubs (Scotland) Bill. (Reply from Cabinet Secretary issued on 21 August.)

Email of 30 June from Derek Mackay MSP on behalf of a constituent regarding the CAMRA Cheers to Choice campaign which supports pubs to reopen and, amongst other things, urges all pub companies to give tenants the option to stock local and independent beers and ciders. The constituent calls for support for the Bill. (Reply issued 21 August.)

Email of 20 July from Beatrice Wishart MSP on behalf of a constituent supporting the CAMRA Cheers to Choice campaign and asking for Government views on the Bill. (Reply issued 26 August.)

Neil Bibby MSP wrote to the Minister on 12 August seeking support for the Bill. (Reply issued 17 August 2020.)

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Three constituency cases were received as part of CAMRA's Cheers to Choice campaign. These asked for support for the Bill. They have all received official replies:

- **[redacted]** to Maree Todd, 26 June – replied 19 August
- **[redacted]** to Maree Todd, 27 June – replied 19 August
- **[redacted]** to Alex Neil MSP, 29 June – replied 19 August

Letter from Heineken regarding support for tenants during Covid and the benefits of the tied model – 21 October 2020 (Reply issued 5 November.)

Letter from Green King/Belhaven regarding support for tenants during Covid and the need for more Government support for the sector – 28 October 2020. (Draft reply with Minister.)

Letter from SLTA seeking support for the Bill – 29 October 2020. (Reply issued 18 November.)

Letter from SLTA on behalf of coalition, seeking support for the Bill – 3 November 2020. (Reply issued 10 November.)

Letter from **[redacted]** regarding further evidence from tenants – 3 November 2020. (Reply issued 10 November.)

**TIED PUBS (SCOTLAND) BILL
STAGE 1 DEBATE, 26 NOVEMBER 2020**

CLOSING SPEAKING NOTES (4 minutes)

Introduction

Thank you, Presiding Officer.

Thanks to all the members who have contributed during this debate. The range of views from across the Chamber highlights the challenges around this Bill.

We are committed to supporting the pub sector in Scotland

It is clear that we are all committed to supporting the pub sector in Scotland. It is hugely important to our communities and to the many people working in the business.

Government recognises the difficulties currently faced by the sector and we want to ensure a positive future for pubs across the country.

We want to see tenants who are treated fairly, and properly rewarded for their hard work and commitment. This is something that this Government wants to see across business.

I think this Bill would contribute towards the aim of supporting the sector.

We recognise the challenges with assessing this Bill

The discussion today has highlighted the difference in opinion about the need for this legislation.

I have not been surprised by the range of views, given the polarised nature of the evidence presented during Stage 1.

We want to see fair and equitable treatment for tenants

I think the discussion has confirmed that there are real concerns about imbalances within the sector.

This Government is committed to fair and equitable treatment within commercial agreements.

With some amendment, the provisions in this Bill would help to ensure equity within the sector, with few additional demands on pub companies who act with fairness and responsibility.

The number of pubs covered by the Bill may be relatively small but every business is important and deserves protection.

We recognise that many pub companies are providing good support for tenants

I hear the message from the pub companies, for example about the support they have provided for tenants during Covid and about the possible implications of legislation especially for investment.

I do not doubt that many companies are providing real support for their tenants to help them through the crisis –and in many other ways in normal times.

Good landlords will remain good landlords and there is a lot to be gained on both sides if the landlord/tenant relationship is a strong one.

We have decided, on balance, that action is needed

On balance, I think it is right that we legislate to ensure that we have the necessary protections in place for the pub sector in Scotland.

Support for the Bill is dependent on amendments at Stage 2 to address specific issues with the drafting.

Although the Committee did not look at the Bill in the context of Covid-19, it is now a factor.

I appreciate the frustrations of some pub companies with regard to this legislation and would want to work with them to ensure that the Code is fair. I intend to consult widely.

Conclusion

I know this decision will be welcomed by many tenants. Less so by pub companies. I hope that they will work with us to secure a strong and vibrant future for the pub sector in Scotland.

I ask Parliament to support the Tied Pubs (Scotland) Bill, subject to amendment, and agree to the general principles of this Bill.

Document 25

CSCCL paper – withheld

Document 26

SBPA Briefing paper – attached as a separate pdf

Document 27

From: [redacted]
Sent: 25 November 2020 15:38
To: Minister for Business, Fair Work and Skills; Higgins K (Kate)
Cc: Burgess WG (George)
Subject: RE: A letter from Punch Pubs & Co CEO, Clive Chesser
Attachments: Tied Pubs Bill - Stage 1 debate - briefing - new Annex D Q&A - 25 Nov 2020.docx

[redacted]

I attach a revised Annex D with new Q&A on investment [redacted]

Thanks.

[redacted]

From: [redacted] On Behalf Of Minister for Business, Fair Work and Skills
Sent: 25 November 2020 14:15
To: [redacted] Higgins K (Kate) <Kate.Higgins@gov.scot>; Minister for Business, Fair Work and Skills <MinisterBFWS@gov.scot>
Cc: Burgess WG (George) <George.Burgess@gov.scot>
Subject: RE: A letter from Punch Pubs & Co CEO, Clive Chesser

Whatever is easiest for you is good for me [redacted].

And thanks for the lines, will pass those on. To note, I've printed out the debate briefing pack already so he has that to hand as well.

[redacted]

From: [redacted]
Sent: 25 November 2020 14:12
To: Higgins K (Kate) <Kate.Higgins@gov.scot>; Minister for Business, Fair Work and Skills <MinisterBFWS@gov.scot>
Cc: Burgess WG (George) <George.Burgess@gov.scot>
Subject: RE: A letter from Punch Pubs & Co CEO, Clive Chesser

Hi [redacted]

How do you want me to handle any changes to the briefing? New pages to slot in or whole new brief? I may just add one or two points to the Q&A re the "change of stance" issue.

[redacted]

[redacted]

Q&A

THE BILL

Why do you agree with the principle of the Bill?

We support the broad intention of the Bill of fair and equitable treatment within commercial agreements and want to see a successful tenanted pub sector in Scotland.

The Bill's Policy Memorandum estimates that the potential impact of the Bill in terms of enquiries, arbitration cases and Market Rent Only requests would be minimal. So why bother?

We considered this when deciding our approach on the Bill but concluded that there are clearly issues of imbalance within the landlord/tenant relationship in Scotland that need addressed now. Every business matters.

Government's decision to go ahead is an about-turn since the Minister's Stage 1 evidence session?

We have always supported the broad intention of the Bill, of fair and equitable treatment within commercial agreements.

This has been challenging because of the polarised nature of the debate. We have listened carefully to the evidence, as we said we would, and consider that there is a problem that needs addressed.

On balance, our conclusion is that Government should support this Bill. We will only do this if specific amendments are made at Stage 2.

Do you agree that legislation in Scotland needs to go further than that in place in England and Wales?

We need legislation that is relevant for Scotland. I will be speaking to Mr Bibby about some amendments that we would like to see to the Bill, as introduced.

We are aware that UK Government are considering amendments to their legislation following the first statutory review of the Pubs Code and Adjudicator.

Do you think the UK legislation has been a success?

We are aware of some issues with the initial operation of the Code and the Adjudicator and we can learn from this.

We are aware that UK Government are considering amendments to their legislation following the first statutory review of the Pubs Code and Adjudicator.

What changes to the Bill are you looking for at Stage 2?

The following amendments are required if Government is to support the Bill:

[redacted]

We will be scrutinising the Bill in detail with our lawyers and there may be further amendments which are likely to be minor and technical in nature.

LACK OF EVIDENCE

If you are not convinced by the evidence provided at Stage 1 then why are you supporting this Bill? Legislation is supposed to be informed by evidence.

I agree with the Committee that it has been challenging to form a view on the Bill because of the nature of the evidence provided. In addition to the evidence to the Committee, I have taken into account the experiences of stakeholders and developments like the UK Government review and the Heineken case.

My decision is that, on balance, legislation is required.

EXISTING VOLUNTARY CODE

Why not just strengthen the voluntary code that already exists?

It is a voluntary code and Government cannot require pub companies to sign up for it, or interfere in its operation.

The current code does not appear to be making any difference. Some tenants are unaware of it and there is also confusion over the existence of the Governing Body. This does not inspire confidence.

Do we not need something akin to the Groceries Supply Code of Practice?

The Groceries Code regulates a very different relationship between supermarkets and their suppliers and the Code Adjudicator monitors and enforces the operation of the Code only in relation to the largest retailers.

SCOTTISH GOVERNMENT RESEARCH AND FURTHER ACTION

Did your own research not conclude that there were no particular problems within the tenanted sector in Scotland?

Our independent research in 2016 concluded that whilst there was some dissatisfaction with elements of the tied arrangement, for example the cost of beer and cider, there were benefits too and in general no part of the pub sector appeared to be unfairly disadvantaged.

The research was helpful but it was a relatively small sample size due to a lack of engagement from tenants.

Do you have plans for further research?

There are no plans for further research.

GENERAL

Do you not believe the evidence given by the pub companies?

I am grateful to pub companies and others for their engagement with the Bill process and for the evidence they provided. I have made no secret of the fact that the polarised nature of the evidence made decisions on this Bill difficult but I recognise that there are strongly held views on both sides.

Do you agree that this decision will halt investment in the pub sector in Scotland?

I am aware of some pub company concerns that the Bill will impact negatively on investment plans. Tenants have provided counter claims suggesting that these contentions are over-played.

On balance, I think Government should support this Bill to address imbalances in the landlord/tenant relationship in Scotland.

Implementation of the legislation could take some time. What are you doing now to support this beleaguered sector?

Our absolute focus at this time is to help businesses survive and retain as much employment as possible – that is why we, and the UK Government, have put in place a range of measures to support pub tenants.

Have Ministers received a lot of representations from individuals or representative bodies about the Bill?

Ministers have received some correspondence about the Bill, or referring to the Bill, from both sides of the industry. This has not been significant.

Are the rent issues that emerged as a result of the Covid emergency an indication of unfair practices by pub companies?

At the start of Covid, I engaged with the SLTA and the Scottish Beer and Pub Association and their members regarding the position around rents and concluded

that the majority of pub-owning businesses do appear to have taken reasonable steps to minimise the impact on their tenants. Some pub companies continue to review and extend their support.

Document 29

From: [redacted]
Sent: 25 November 2020 17:44
To: Minister for Business, Fair Work and Skills; Higgins K (Kate); [redacted];
Cc: Cabinet Secretary for Economy, Fair Work and Culture; DG Economy; Quinlan K (Kevin); Burgess WG (George); [redacted]
Subject: RE: TO CLEAR: Tied Pubs Bill - Stage 1 debate, 26 November - COMMS

Thanks [redacted] Updated comment below and issuing under Thur 00:01 embargo now.

[redacted]

Ahead of the Stage 1 Tied Pubs Bill today, Minister for Business, Fair Work and Skills Jamie Hepburn said:

“As the Scottish Parliament’s economy, energy and fair work committee has found at Stage 1 of the Bill process, this has been a challenging issue to consider. We have listened carefully to the evidence, as we said we would do.

“Whilst most landlord - tenant relationships are strong and effective, it appears to be that this is not always the case. Ultimately we want to see fair and equitable treatment within commercial agreements and a successful tenanted pub sector all across Scotland.

“On balance, therefore, the Scottish Government will be supporting the general principles of this Bill and we look forward to working with its sponsor, Neil Bibby MSP, and the Parliament on the next stages of the legislative process.”

Background:

We considered the alternative approach of agreeing to implement relevant Committee recommendations. But initial analysis of taking these on suggested that this would in all likelihood have resulted in legislation being required. Stage 1 of the Bill clearly identified that there is a problem for some tied pub tenants and some matters which require a better regulatory approach.

[redacted]

Document 30

From: [redacted] on behalf of Minister for Business, Fair Work and Skills
Sent: 25 November 2020 17:53
To: [redacted] Minister for Business, Fair Work and Skills
Cc: [redacted] Communications Economy; Higgins K (Kate); Burgess WG (George)
Subject: RE: Tied Pubs Bill - Note from Mr Hepburn
Attachments: RE: Tied Pubs Bill - Note from Mr Hepburn

Thanks [redacted], Mr Hepburn asked for [redacted] to be removed but was otherwise content and it has now been issued (attached).

[redacted]

From: [redacted]

Sent: 25 November 2020 15:14
To: Minister for Business, Fair Work and Skills <MinisterBFWS@gov.scot>
Cc: [redacted]; Higgins K (Kate) <Kate.Higgins@gov.scot>; Burgess WG (George) <George.Burgess@gov.scot>
Subject: RE: Tied Pubs Bill - Note from Mr Hepburn

Hi [redacted]

I suggest the following:

“Dear Neil

Thank you for responding quickly to my email of 24 November and for confirming that you are happy to lodge the amendments we have proposed for Stage 2 of the Bill.

[redacted]

I would be happy for us to meet again to discuss [redacted] or other issues of concern.”

Regards.

[redacted]

From: [redacted] On Behalf Of Minister for Business, Fair Work and Skills
Sent: 25 November 2020 14:49
To: Minister for Business, Fair Work and Skills <MinisterBFWS@gov.scot>; Higgins K (Kate) <Kate.Higgins@gov.scot>; [redacted]; Burgess WG (George) <George.Burgess@gov.scot>
Cc: [redacted]
Subject: RE: Tied Pubs Bill - Note from Mr Hepburn

[redacted]—Mr Hepburn would like to respond to Neil Bibby by email. Grateful if you could provide some wording and I will issue.

Thanks,

[redacted]

Document 31

From: [redacted] on behalf of Minister for Business, Fair Work and Skills
Sent: 26 November 2020 09:48
To: [redacted]
Cc: Minister for Business, Fair Work and Skills; Burgess WG (George); Higgins K (Kate)
Subject: Tied Pubs Responses
Attachments: Thank you and Additional Information ; Belhaven - Tied Bill Discussion

Categories: Red Category

Hi [redacted],

Re attached letters – Mr Hepburn would like to respond fully to both after the debate (although early next week is fine). I'm about to send acknowledgments to both and confirm a full response will be provided as soon as possible. Grateful if drafts can be provided next week.

Thanks,

[redacted]

Document 32

From: [redacted] on behalf of Minister for Business, Fair Work and Skills
Sent: 26 November 2020 19:45
To: [redacted]; Minister for Business, Fair Work and Skills
Cc: Burgess WG (George); Higgins K (Kate)
Subject: RE: Tied Pubs Bill - letter from Minister to SBPA - 26 Nov 2020
Attachments: Letter from the Minister for Business, Fair Work and Skills.

Thanks [redacted], Mr Hepburn was content and the letter has now been issued (attached).

Hope you're able to enjoy a well-deserved break tomorrow!

[redacted]

From: [redacted]
Sent: 26 November 2020 18:45
To: Minister for Business, Fair Work and Skills <MinisterBFWS@gov.scot>
Cc: Burgess WG (George) <George.Burgess@gov.scot>; Higgins K (Kate) <Kate.Higgins@gov.scot>
Subject: Tied Pubs Bill - letter from Minister to SBPA - 26 Nov 2020

Hello [redacted]

A good debate today, I thought. I now attach the draft letter for the SBPA, as requested after the meeting yesterday.

Please let me know if you need anything more.

Regards.

[redacted]

Document 33

From: [redacted], On Behalf Of Minister for Business, Fair Work and Skills
Sent: 01 December 2020 08:54
To: [redacted], Minister for Business, Fair Work and Skills <MinisterBFWS@gov.scot>; Burgess WG (George) <George.Burgess@gov.scot>; [redacted],
Subject: RE: Tied Pubs Bill - Stage 2

Thanks [redacted] Mr Hepburn has noted.
[redacted]

From: [redacted],
Sent: 30 November 2020 11:45
To: Minister for Business, Fair Work and Skills ; Burgess WG (George); [redacted],
Subject: Tied Pubs Bill - Stage 2

All

Please see the email at the beginning of this trail from [redacted] in the Parliament Non-Government Bills Unit (NGBU). I called [redacted] this morning and answered his various questions about handling of Stage 2 amendments.

I asked about timings for Stage 2. Worryingly, the Committee had proposed 15 or 22 December. The NGBU and Mr Bibby have indicated a preference for later January, possibly 19 January. I suggested that a later date was essential if the Bill were to be in a shape for Government to support it at Stage 2. [redacted] said that he hopes to know the timing for Stage 2 in the next day or two. I will share the details as soon as I have them.

I have already spoken to [redacted] about a meeting soon with SGLD and PCO to talk about next steps for SG.

Please let me know if you have any questions.

Thanks.

[redacted],

[redacted],

[redacted],

Document 39

From: [redacted]
Sent: 09 December 2020 11:46
To: Minister for Business, Fair Work and Skills
Cc: Bowman K (Katy); [redacted]; Burgess WG (George)
Subject: Tied Pubs Bill - briefing for meeting with SPBA, 10 December 2020
Attachments: Letter from the Minister for Business, Fair Work and Skills.; Tied Pubs Bill - briefing for meeting with SBPA, 10 Dec 2020.doc

Hi [redacted]

I attach briefing for the meeting with the SPBA tomorrow regarding the Tied Pubs (Scotland) Bill. I also attach the Minister's letter to the SPBA of 26 November.

Thanks.

[redacted]

BRIEFING FOR THE MINISTER FOR BUSINESS, FAIR WORK AND SKILLS

Document 40

What	Meeting with the Scottish Beer and Pub Association (SBPA) to discuss the Tied Pubs (Scotland) Bill
Where/ When	11:00-11:30, Thursday 10 December 2020 Conference call details: Number – [redacted] (for external/Minister) Host Code – [redacted] (PO will host) Guest code – [redacted]
Key Message(s)	- Government is supportive of the Bill but this is subject to amendments at Stage 2. - Interested to discuss the issues again with the SBPA including how Government might reduce concerns about the Bill.
Who	Paul Togneri, SBPA Andy Tighe, SBPA
Why	The SBPA requested the meeting following the Minister's letter of 26 November immediately after the Stage 1 debate for the Bill (attached).
Supporting official	George Burgess, Food and Drink Division – mobile [redacted] [redacted] , Food and Drink Division – mobile [redacted]
Media/ Social Media	N/A
Briefing contents	Annex A – Summary Annex B – Overview of SBPA paper on the Bill, 24 November 2020 Annex C – Proposed Stage 2 amendments

SUMMARY

Background

The purpose of the meeting is to discuss the Tied Pubs (Scotland) Bill and the Stage 2 process. Stage 2 is expected to be on 23 February 2021.

The Minister met with the SPBA on 25 November to discuss the Bill. The SBPA clearly set out their concerns about the Bill and the likely negative impact on the tied pub sector in Scotland. They focused particularly on the lack of evidence to support the need for a Bill and the fact that legislation would mean significantly less investment by pub companies. A summary of a paper from the SPBA concerning the Bill is at Annex B.

The Bill passed Stage 1 on 26 November, with Government support subject to amendments being made at Stage 2. The amendments include **[redacted]**

[redacted] .

The Minister wrote to the SBPA on 26 November (letter attached). The letter confirmed that the Minister is keen to engage with pub companies and other interested parties as work is taken forward on the Bill.

Key lines

- Government is supportive of the Bill but this is subject to amendments at Stage 2. Stage 2 is expected to take place in February.
- We are preparing the amendments which I have mentioned to the SBPA and which I hope are welcomed.
- Keen to ensure that the Bill is fair for both landlords and tenants.
- Interested to discuss the issues again with the SBPA including how Government might reduce concerns about the Bill.

OVERVIEW OF SCOTTISH BEER AND PUB ASSOCIATION PAPER, 24 NOVEMBER 2020

The Scottish Beer and Pub Association submitted a paper – “Tied Pubs (Scotland) Bill: turning-off the investment tap and closing pubs” - to Scottish Ministers on 24 November. The paper sets out arguments for why the Bill should be opposed.

The **overview** of the paper is as follows:

“The Tied Pubs (Scotland) Bill is not evidence-based, and far from helping Scotland's pubs, if passed into law, the Bill will:

- pose a real danger to future, vital investment in the sector
- limit the entrepreneurship opportunities available to those hoping to run their own pub business
- create a significant disincentive for pub-owning businesses to invest in their pub estate as it removes the certainty and confidence required to make future investment decisions, which may lead to closures and job losses

As such, the Bill should be resoundingly rejected by the Scottish Parliament and help give our sector a much-needed lifeline.

The proposal comes at the very worst time for the sector. The focus of the pub companies since March has been ensuring the survival of their pubs through the pandemic. With positive news on a vaccine, companies are now looking forward to the recovery phase and deciding how best to utilise the investment funds they have available. If the Bill progresses to Stage 2, the additional uncertainty created would mean Scottish pubs will be significantly disadvantaged in comparison to those in other parts of the UK. Fewer pubs will reopen, fewer jobs will be retained and the Scottish sector's recovery will likely be much slower than the rest of the UK.

The Bill also seeks to introduce expensive, administratively arduous regulations on business at the worst possible time. It replicates and builds on the problematic legislation introduced for England and Wales in 2016, despite radically different market sizes and no evidence of a problem in Scotland. The Scottish Government would also be forced into the difficult tasks of writing the code and appointing an Adjudicator, who would need to be confirmed by a vote of the Scottish Parliament within 12 months.

The Scottish pub plays an invaluable role at the heart of local communities providing numerous social benefits whilst also contributing £1.15 billion to the Scottish economy every year and employing over 45,000 people across the country. The hospitality industry has faced many challenges before the pandemic, from changing consumer habits, to recruitment shortages and the pressures posed by taxation and regulation that disproportionately impact our sector, resulting in 20% of Scotland's pubs closing in the last ten years. To layer further regulation on the industry at this time would be devastating to the nation's pubs.

Tenants themselves have been speaking out against the Bill. Whilst MSPs may have received emails from CAMRA members urging them to support the legislation, the

BRIEFING FOR THE MINISTER FOR BUSINESS, FAIR WORK AND SKILLS

operators actually impacted by it have also been making it known they oppose the proposal.”

Conclusions/facts from the paper include:

- The Bill will destroy investment and force pubs to close.
- The Bill was, at best, poorly conceived before Covid-19 decimated the sector. Now, it is wholly reckless as it would inflict irreversible harm during the crucial rebuilding period, during which many pubs may struggle to reopen at all. Passing the Bill would play a material role in keeping many pubs closed - some for good.
- The Bill would remove the only low-cost entry point into owning and running a pub.
- Pubs already benefit from significant protections and access to an independent dispute resolution mechanism in the form of the Scottish Pubs Code.
- The industry doesn't want it: pub-owning companies and tenants have spoken out against the Bill.

TIED PUBS (SCOTLAND) BILL - PROPOSED STAGE 2 AMENDMENTS

[redacted]



Tied Pubs (Scotland) Bill: turning-off the investment tap and closing pubs

Overview

The Tied Pubs (Scotland) Bill is not evidence-based, and far from helping Scotland's pubs, if passed into law, the Bill will:

- pose a real danger to future, vital investment in the sector
- limit the entrepreneurship opportunities available to those hoping to run their own pub business
- create a significant disincentive for pub-owning businesses to invest in their pub estate as it removes the certainty and confidence required to make future investment decisions, which may lead to closures and job losses

As such, the Bill should be resoundingly rejected by the Scottish Parliament and help give our sector a much-needed lifeline.

The proposal comes at the very worst time for the sector. The focus of the pub companies since March has been ensuring the survival of their pubs through the pandemic. With positive news on a vaccine, companies are now looking forward to the recovery phase and deciding how best to utilise the investment funds they have available. If the Bill progresses to Stage 2, the additional uncertainty created would mean Scottish pubs will be significantly disadvantaged in comparison to those in other parts of the UK. Fewer pubs will reopen, fewer jobs will be retained and the Scottish sector's recovery will likely be much slower than the rest of the UK.

The Bill also seeks to introduce expensive, administratively arduous regulations on business at the worst possible time. It replicates and builds on the problematic legislation introduced for England and Wales in 2016, despite radically different market sizes and no evidence of a problem in Scotland. The Scottish Government would also be forced into the difficult tasks of writing the code and appointing an Adjudicator, who would need to be confirmed by a vote of the Scottish Parliament within 12 months.

The Scottish pub plays an invaluable role at the heart of local communities providing numerous social benefits whilst also contributing £1.15 billion to the Scottish economy every year and employing over 45,000 people across the country. The hospitality industry has faced many challenges before the pandemic, from changing consumer habits, to recruitment shortages and the pressures posed by taxation and regulation that disproportionately impact our sector, resulting in 20% of Scotland's pubs closing in the last ten years. To layer further regulation on the industry at this time would be devastating to the nation's pubs.

Tenants themselves have been speaking out against the Bill. Whilst MSPs may have received emails from CAMRA members urging them to support the legislation, the operators actually impacted by it have also been making it known they oppose the proposal. Andrena Bowes, a well-known operator with several pubs across Central Scotland said:

“As a tenant under the tied model, I can speak personally of its success and joint-partnership model, which sees a sharing of the risks and rewards.”

During the pandemic, my pub company has provided constant advice, support, reimbursement for unusable stock and have also reduced rent, which without would have forced us to close our doors for good.

“The news that this proposal is even being considered in light of the pandemic makes you want to cry. Hospitality businesses are begging for meaningful economic support that could save their livelihoods and jobs of their staff, and politicians are wasting time discussing technical rules which impacts a tiny minority of pubs.”

Other tenants have been writing to their MSPs and also wrote to the Economy, Energy and Fair Work Committee urging them to reject the Bill, which they subsequently and decisively did.

What does the evidence say?

- On 11 November 2020, **the Economy, Energy and Fair Work Committee** reported that they did not agree that legislation was required and does not support the general principles of the Bill.
- In 2016, **the Scottish Government commissioned independent research** into the pubs sector, which found that ‘no part of the sector was at a significant disadvantage’ and no legislative action was required in Scotland. Mr Bibby first announced his intention to legislate prior to these findings being published, and now without explaining why, he has discarded these findings.
- Similarly, **much of the evidence Neil Bibby MSP uses in support of his Bill is highly questionable**, including product costs analysis, which is seven years old, and tied pub closure stats attributed to a single individual's claims.
- Additionally, the claim by Mr Bibby that ‘over 90 per cent’ of the respondents to his consultation were supportive of his proposal, was based on a population which included very few pub operators or businesses directly impacted by the Bill. Indeed, many of the response were from **fellow Labour MSPs, councillors and party members, due to the fact that Mr Bibby wrote to Labour party members urging them to respond**. The ‘2-3 minute survey’ in no way compares to the qualitative, weighted and substantive interviews conducted by CGA on behalf of the Scottish Government, which lasted over 120 minutes and went into detailed financial information.
- In short, there is **no credible evidence base on which to support this bill**.

What are the facts?

- The Bill seeks to introduce a more draconian version of pub business regulations in England and Wales. However, the market in Scotland is fundamentally different, something which Mr Bibby fails to acknowledge:
 - There are only 750 leased and tenanted Pubs in Scotland (17% of the market) would be impacted; whereas there are over 15,000 tied pubs (36% of the market) in England & Wales.
 - Issues in England & Wales were often related to accommodation included within the rental of pub premises. Whilst common practice elsewhere in the UK, this is a rarity in Scotland and features only in a very few agreements.
 - In the last decade, far more independent pubs (854) in Scotland have closed their doors for good, in comparison to those operating under the tenanted/leased model (332).
- **Investment:** The Bill will destroy investment and force pubs to close.

- The introduction of the Bill has already cost Scottish pubs an estimated £10 million in planned investment, which has been suspended by pub companies until the Bill is defeated.
 - The inclusion of a "Market Rent Only" (MRO) option with no prequalifying circumstances for it to be triggered creates a significant disincentive for pub companies to invest in their pubs or even stay in the Scottish market at all.
 - Since the introduction of a statutory code in England and Wales pubs in Scotland have almost doubled their share of UK-wide investment spend from pub companies (from 6.53% to 11.66%). Passage of the Bill would not only reverse this trend, but due to the fact the proposal goes significantly further than the English and Welsh legislation, it would completely destroy investment at the most crucial time. It would put Scottish pubs at a competitive disadvantage to those elsewhere in the UK when trying to attract investment into their business.
 - The policy memorandum accompanying the Bill, concedes that the proposed legislation risks pub closures, and may also lead to fewer pub tenancies for those that wish to enter the pubs sector.
- **Coronavirus pandemic:** The Bill was, at best, poorly conceived before Covid-19 decimated the sector. Now, it is wholly reckless as it would inflict irreversible harm during the crucial rebuilding period, during which many pubs may struggle to reopen at all. **Passing the bill would play a material role in keeping many pubs closed - some for good.**
 - All pub owning companies have given their operators rent concessions, totalling several million GBP in support. These will continue through until at least April 2021 and has been instrumental in ensuring these businesses survive to the other side of the crisis.
 - Additionally, pub owning companies have provided valuable support in other areas like stock, maintenance, business advice, mental wellbeing checks and other special commercial or financial advantage (SCORFA) benefits.
 - In contrast, the most generous support on offer from commercial landlords had been rental or mortgage deferments. These businesses will be at a significant disadvantage when forced to pay these sums back when trying to recover.
 - The hospitality industry has been disproportionately impacted, and within that pubs have been the worst hit. The restrictions on the service of alcohol have acted as a double hit, with the majority of pubs profitability contingent on their wet sales simply being unviable across the different levels. Tied pubs are better positioned to survive than those without the support on offer.
 - Decisions around investment spending by pub owning companies will be made over next few months. The possibility of this being considered by the Scottish Parliament would create a significant advantage for pubs in other parts of the UK, over Scottish pubs due to the increased uncertainty.
 - Nobody knows how long the restrictions on pubs will last, and adding further regulations on business will only lead to more pubs failing and more jobs being lost.
 - **Entrepreneurship:** The Bill would remove the only low-cost entry point into owning and running a pub.
 - The model improves accessibility to individuals, or families, who may want to run a pub by offering a route to ownership on average 10 times less than in the free of tie sector.
 - The Bill would remove this route, resulting in would-be pub entrepreneurs being unable to enter the sector, ensuring that running a pub would become the preserve of those inheriting a family business, or who are independently wealthy.
 - The partnership element of the model (both pub company and tenant share risks and rewards), means that Pub companies also provide significant tangible benefits

in the form of personal Business Development Managers (BDMs), as well as access to reduced cost services through the purchasing power of the pub company.

- **The voluntary code:** Pubs already benefit from significant protections and access to an independent dispute resolution mechanism in the form of the Scottish Pubs Code.
 - This code was launched in 2016 and provides tied-pub tenants many of the rights included within the provisions of Neil Bibby's Bill, but without the damaging impact to investment and unnecessary cost to the taxpayer.
 - It also gives tenants access to an independent, low-cost arbitration service with pub companies bound by its rulings.
 - Since being launched in 2016, there has only been one complaint.
 - The industry has consistently sought to improve the system, and as a result, formed the new Scottish Pub Governing Body (SPGB) to oversee the code in 2020. Previously, it was under the auspices of the UK-wide Pub Governing Body (PGB).

- **The industry doesn't want it:** Pub-owning companies and tenants have spoken out against the Bill.
 - All the major pub owning companies have condemned the proposal with **Star Pubs & Bars** (Heineken UK), **Belhaven Pubs** (Greene King), **Hawthorn Leisure**, **Admiral Taverns**, **Caledonian Heritable**, **Iona Pubs** (G1 Group) and **Punch Pubs**, all making robust representations to the committee in the consultation and to MSPs beforehand.
 - Many tenants have also been critical of the proposal. A number of pubs took the time during the pandemic to write the committee's consultation citing their concerns, including:
 - **The Bayview Bar**,
Dundee
 - **The Braes**,
Rutherglen
 - **Burts Bar**,
Buckhaven
 - **Cleddans bar**,
Clydebank
 - **The Clermiston**,
Edinburgh
 - **Commercial Inn**,
Dunfermline
 - **The Earl of Zetland**,
Falkirk
 - **The Elizabethan**,
Dunfermline
 - **Livingston Inn**,
West Lothian
 - **Lock 27**,
Bearsden
 - **Queen Street Tavern**,
Forfar
 - **The Railway Inn**,
West Calder
 - **The Scottie**,
Edinburgh
 - **The Terrace**,
Edinburgh
 - **Victoria Bar**,
Rutherglen
 - **The Wheatsheaf**,
Kirkcaldy
 - The industry fighting to survive right now. It will not thank MSPs of any political party for burdening them with more regulation at this time, least of all, regulation which will cost them investment and come with a per pub levy to help pay for the new public office of 'Pubs Code Adjudicator'.
 - The taxpayer similarly will not thank politicians with another arms-length public body which they must fund the initial start-up costs.