



Tied pubs: consultation on a Scottish Pubs Code - workshops with tenants



AGRICULTURE, ENVIRONMENT AND MARINE

Contents

Contents	2
1. Introduction	4
1.2 Research aims and objectives	4
2. Approach to the research	5
2.1 Approach	5
2.2 About the workshop participants	5
2.3 Limitations to the research	6
3. Executive summary	7
3.1 Current relationship with pub-owning company and initial thoughts on the Code	7
3.2 Market Rent Only (MRO) leases	8
3.3 Guest beer agreements	9
3.4 Arbitration	10
3.5 Scope of the new Scottish Pubs Code	11
3.6 Impact of the Scottish Pubs Code on the business	11
3.7 Conclusions	11
4. Research findings: Current relationship with pub companies and initial thoughts on the Code	14
4.1 Current relationship with the pub-owning company.....	14
4.2 Sources of advice and guidance	15
5. Research findings: Market Rent Only (MRO) leases	18
5.1 Overall views, concerns, benefits and drawbacks.....	18
5.2 Exceptions to the obligation to offer a MRO lease: Substantial investment by the pub-owning company.....	19
5.3 Other potential exceptions.....	21
5.4 Information required prior to requesting a MRO lease	22
5.5 Timescale for negotiating a MRO lease	23
6. Research findings: Guest beer agreements	25
6.1 General views on guest beer agreements.....	25
6.2 Selecting a guest beer	26
6.3 Effect of guest beer agreement on rent and Flow Monitoring Equipment	27
7. Research findings: Arbitration	29
7.1 General views about arbitration and what it should cover.....	29
7.2 Setting out the arbitration process in the Code	30
8. Research findings: Scope of the new Scottish Pubs Code.....	31
8.1 Views on the existing voluntary code	31

8.2 Scope of the new Code	32
9. Research findings: Impact of the Scottish Pubs Code on the business .	33
10. Conclusions	35
Appendix A: Workshop discussion guide	39
Appendix B: Pre-workshop task	46

1. Introduction

The Tied Pubs (Scotland) Act requires the Scottish Government to create a Scottish Pubs Code that will regulate the relationship between tenants and their landlords. As part of a wider consultation with representative bodies of tied pub tenants, landlords and pub owning companies, Progressive Partnership was commissioned by the Scottish Government to undertake qualitative research with tenants to understand their views on what the Code should cover and how it might impact them.

1.1 Background and policy context

In April 2021, the Tied Pubs Bill was passed into law as the Tied Pubs (Scotland) Act. The Act requires the Scottish Government to create a Scottish Pubs Code that will regulate the relationship between tenants and their landlords. The Code will be enforced through a new, independent Scottish Pubs Code Adjudicator who will be appointed by Scottish Ministers. The Adjudicator will have the following key purposes:

- a) investigating compliance of pub-owning companies with the Code;
- b) monitoring whether the pub-owning company is complying with a direction from the Adjudicator; and
- c) overseeing the offer of Market Rent Only leases to tenants

The Adjudicator will have various powers to enable it to carry out its functions and will have the power to impose fines.

The new Scottish Pubs Code is likely to draw on aspects from the existing Scottish voluntary code of practice and the tied pubs code from England and Wales (which is set out in legislation).

1.2 Research aims and objectives

As part of a wider consultation with representative bodies of tied pub tenants, landlords and pub owning companies, the Scottish Government was keen to seek the views of tenants. Specifically, the research aimed to:

- identify tenant operators' (i.e. tied pub tenants') views on key elements of the proposed Scottish Pubs Code such as Market Rent Only (MRO) leases, guest beer agreements (allowing tied pubs to select at least one guest beer of their choosing), aspects from the voluntary code, and use of arbitration;
- highlight what else the code might need to cover; and
- highlight the likely impact and any unintended consequences both for the business and the wider community.

2. Approach to the research

2.1 Approach

The research comprised two qualitative workshops with tenants conducted online via Zoom videoconferencing. Each session lasted for two hours. The first workshop was held with contacts provided by the Scottish Beer and Pub Association (SBPA) and the second with contacts provided by the Scottish Licenced Trade Association (SLTA). The representative bodies had informed the contacts of the research and secured their interest before passing on their details. Progressive then recruited the tenant contacts by email and telephone.

Circumstances meant that workshop attendance was lower than hoped for. Although ten contacts were provided altogether (five each from SBPA and SLTA), only three SBPA contacts were able to attend the first workshop and two SLTA contacts the second. A number of contacts either dropped out at short notice or were unable to commit to attending due to ongoing issues in their businesses and the wider industry, including beer shortages and staff shortages due to coronavirus. It would be fair to say that the research coincided with a very difficult period for the industry.

That said, worthwhile and valuable insights were gained from the five tenant publicans who did take part in the discussions.

Prior to the workshops, Progressive drafted a topic guide that was signed off by the Scottish Government project team and used to guide the workshop discussions. In order to make best use of the time in the workshops, participants on recruitment were also given a pre-task exercise to complete in the days beforehand. The aim was to encourage them to marshall their thoughts on key questions relating to the Code around MRO leases, guest beer agreements, and what other things the Code should cover. The topic guide and pre-workshop task can be found in the appendices.

Workshops were moderated by an experienced researcher from the Progressive executive team.

2.2 About the workshop participants

Tenant contacts provided by SBPA who participated in the workshop tended to be larger operators running multiple pubs. The SLTA-sourced participants were both small operators – one operated a single pub, another operated a pub and an entertainment venue owned by different landlords. Both tenants nominated by SLTA were on Full Repairing and Insuring (FRI) leases¹.

¹ A FRI lease means a full repairing and insuring lease where all costs of maintenance and repair and the cost of insurance (whether insured directly or through the landlord) are met by the tenant.

Table 2.2: Profile of workshop participants

	No. of attendees	About attendees' businesses
Workshop 1: Tenants nominated by SBPA	3	<p>Premises across mainland Scotland with several different landlords</p> <p>A number of premises, two different landlords</p> <p>A number of premises, two different landlords, mainly city centre-based</p>
Workshop 2: Tenants nominated by SLTA	2	<p>One pub in small town/semi-rural area</p> <p>One city pub, entertainment venue with different landlord</p>
Total	5	

2.3 Limitations to the research

The overall sample achieved was smaller than anticipated, as discussed above. In particular, it was not possible to speak to any tenants based on islands, so that perspective was not included in this research.

3. Executive summary

3.1 Current relationship with pub-owning company and initial thoughts on the Code

Current relationship with pub-owning companies

Tenants reported that relationships with pub-owning companies have become less favourable for them in recent years. They reported a high turnover of tenants, lack of genuine negotiation over rents, and removal and reduction of tenancies, making it more difficult for new entrepreneurs to enter the business. Some blamed this on uncertainty over the Tied Pubs Bill and the proposed Market Rent Only (MRO) lease obligation in particular, whilst others felt that the relationship had been changing since before the Bill and the pandemic. Overall, relationships were felt currently to be out of balance in favour of pub-owning companies.

Current sources of information and advice

Business Development Managers (BDMs) were felt to be useful regarding issues related to promotion, marketing, regulation and licencing. However they were seen by smaller operators in particular as the face of the pub-owning company. This meant there was a limit to what they felt able to discuss with them, for example concerns about rent arrears. They tended instead to look for support outwith the pub-owning company e.g. SLTA, hospitality bodies, online forums for people in the industry.

General views on the Scottish Pubs Code

Smaller operators especially believed the new Code could be transformational for the industry, especially the MRO lease obligation. This was seen as the key tool in rebalancing the relationship between tenants and the companies as it would provide tenants with real leverage in negotiations around rent and leases. This would set off a chain of positive developments in their view, bringing stability to the industry, encouraging investment, increasing the status of hospitality as a profession and drawing in new talent.

The main concern was around lease renewal. Tenants felt that for the new Code to live up to its promise, there had to be a requirement for automatic renewal of leases providing the tenant had been compliant with the terms of the lease. Otherwise tenants on MRO leases would be reluctant to invest if there was a chance their tenancy may not be renewed regardless of their compliance and performance.

3.2 Market Rent Only (MRO) leases

Overall views, concerns, benefits and drawbacks

As they discussed spontaneously above, smaller operators were very enthusiastic about MRO leases and their potential to transform the sector. Larger operators were concerned however that MRO leases would not be a panacea and may not always work out well for small concerns. They worried that the reality of taking on responsibility for potentially large repair costs, for example, without the backing of a pub-owning company may be too much for the smallest and least experienced operators, and that they may find it hard to access the best deals for products. It should also be noted that the smaller operators we spoke to were very experienced and already had FRI (Full Repairing and Insuring) leases.

Smaller operators felt strongly that the opportunity to apply for a MRO lease should not be tied to the five-year rent review and should be available more frequently than once every five years. In particular, returning to the concerns around automatic rollover of leases, they felt that a MRO lease request should always be an option at the end of a lease period, providing the tenant has been compliant.

Exceptions to the obligation to offer a MRO lease

A substantial investment by the pub-owning company was generally felt to be the only circumstance where an exemption from the obligation was always justified. Tenants recognised that companies needed time (up to five years was felt to be reasonable) to see a return on their investment. Some did feel however that there should be flexibility built in to this exemption, so that if a return on investment was realised sooner than anticipated, this should shorten the exemption period.

‘Substantial’ was mainly felt to refer to any work that materially changed the business by enabling it to increase revenue. By that token, routine repairs and replacement of items due to wear and tear were not felt to be substantial, even though they could be very expensive.

Other potential exceptions

Regarding uninvested sites, tenants were generally against exempting these for experienced operators, although they could see why an exemption would make sense for the less experienced. Some felt that exceptions on very short term tenancies might be justified as a way of seeing how the tenant and the business perform over perhaps the first 12 months. However, there was also a concern that there would be an incentive for companies to offer only short term tenancies as a way of avoiding the MRO obligation.

Information required prior to requesting a MRO lease

Tenants listed a number of things they would need to know in advance relating to the nature of the lease and the previous performance and viability of the business. Two essential pieces of information were an assurance that they would be completely free of a beer tie, and an understanding of what the market rent should

be, preferably based on a source of information other than the pub-owning company.

Timescale for negotiating a MRO lease

All tenants were very clear that timescales had to be covered in the Code to avoid negotiations dragging on and damaging businesses, as they believed had happened in England and Wales in some cases (tenants overall were very wary of anything that could result in a protracted legal process). Six months between application and conclusion of the process was seen to be the maximum reasonable timeframe. Some believed that a key requirement to stop the process taking too long was to include a requirement for MRO leases to be offered via a deed of variation on the existing lease rather than by negotiating a completely new lease. Some highlighted this as a root cause of the problems mentioned in England and Wales.

3.3 Guest beer agreements

General views

Tenants broadly welcomed the proposal. All felt strongly that the main point of guest beer agreements ought to be to help local small-scale brewers, especially microbreweries, and that this needed to be set out in some way in the Code. It should not be a way for rival big brewers to increase their market share.

Tenants felt that the key benefit was to the local economy rather than just to their businesses, although some highlighted a current and growing demand from a wide range of clientele for local products, in which context guest beer agreements focused on local microbreweries made good sense.

Selecting a guest beer

It was felt to be important that the guest beer agreement as set out in the Code should specifically include keg beers. Some tenants pointed out that many pubs were unable to serve cask beers whilst almost all could serve keg beers. Moreover, it was highlighted that microbreweries were increasingly moving towards keg products. The tenants we spoke to on FRI leases were both already free of tie regarding cask beers – another reason why guest keg beers were attractive to them.

Some were concerned that setting out the guest beer agreement in the code in terms of 'a minimum of one' guest beer could mean that some companies in practice would not allow more than one, and that less experienced operators may struggle to negotiate above one beer. Some wondered if the requirement could be worded in terms of a percentage of beer allowed to be sold free of tie, but it was acknowledged that monitoring this in pubs would be difficult.

Effects of guest beer agreement on rent and Flow Monitoring Equipment

Tenants were on balance against the idea that the guest beer agreement should be allowed to impact rents. The spirit of the guest beer agreement in their view was to rebalance the relationship between the tenant and the company and to support the local economy. Others however thought it was perhaps inevitable that flows of guest beers and tied beers would be monitored. Companies would be able to see if a guest beer was impacting sales of tied beers, possibly providing them with an argument for increasing the rent.

3.4 Arbitration

General views

Access to independent arbitration was universally viewed as important in order to prevent rent and lease negotiations dragging on. Tenants thought that tenant fees for using arbitration should be capped, but that pub-owning companies' fees should not, reflecting their far greater resources. That said, a tenant fee was felt to be required, and set at a level that would prevent the system being tied up with frivolous claims but not deter genuine claims.

Tenants' greatest concern was very much that the system could be abused by tenants looking to challenge things in their signed leases that they happened not to like. In terms of genuine need for arbitration, tenants were particularly keen that disputes over dilapidations should be covered. Most were keenly aware of the potential for protracted legal dispute in this area, and how damaging it could be for tenants financially.

Setting out the scope of the arbitration process in the Code

Tenants wanted to see costs and fees clearly detailed, and the process set out clearly and in plain English. Some also felt that case studies and practical examples of where arbitration has been used and what happened would also be useful for them. They also wanted to see a requirement for pub-owning companies to be totally transparent in the arbitration process, with the requirement to provide information on request to the Adjudicator.

The general feeling was that the Adjudicator's decision should be final. Again, it was seen as important for tenants to avoid drawn-out legal processes. If the Adjudicator's decision could be challenged legally, it should at least have weight in that legal process.

3.5 Scope of the new Scottish Pubs Code

Views on the existing voluntary code

The voluntary code was seen as comprehensive and useful for new and inexperienced tenants. However for the larger, multiple operators it was felt to be unfair that they had to go through the same processes set out in the code whenever they took on a new lease. They felt a fast track system for taking on a new business would be a welcome addition to the new Code.

Scope of the new Code

Tenants generally did not mention areas outwith the scope of the current voluntary code that need to be included in the Scottish Pubs Code. However they did feel that the requirements for training of BDMs needed to be strengthened. The voluntary code specifies that they must receive training within two years of starting the role, but this was felt by some to be too late, and that the new Code needed to require training before or very soon after taking up the role. Otherwise the value of new BDMs to experienced operators would be limited.

One concern that emerged spontaneously among the multiple operators was whether there was a lower limit in terms of number of premises owned below which the new Code need not apply. They felt that making the Code obligatory for the smallest companies (e.g. someone who has purchased three or four pubs as part of their pension plans) could be too onerous for them.

3.6 Impact of the Scottish Pubs Code on the business

Overall, the new Code was seen as potentially transformative, bringing stability and security to the sector, stemming the churn of tenants, forcing pub-owning companies to act more fairly, encouraging investment and generally raising the status of hospitality and the quality of the people in the business. The MRO lease obligation in particular was seen as offering vital leverage for tenants in their relationships with pub-owning companies, and the guest beer agreement was envisaged as a way to help the local economy.

There were concerns in the short term over bureaucracy and red tape. In general there was an urgent desire to have proposals firmed up so that tenants and pub-owning companies alike could adjust to the new realities and move forward.

3.7 Conclusions

Tenants believe the Code has the potential to be transformative for the industry, driving investment, quality of tenants, recruitment, long-term careers, bolstering its status as a profession and rebalancing the relationship between tenants and pub-owning companies. The MRO lease obligation was seen as the key tool in rebalancing that relationship from which all the other benefits would flow.

It should be noted, however, that the most enthusiastic supporters of MRO leases in the workshops were small operators already on FRI leases. The multiple operators were more conscious of the pitfalls of MRO leases for inexperienced operators especially and warned they would not be a panacea.

Relationships with pub-owning companies have suffered in recent times.

Larger multiple operators blamed uncertainty over the new Scottish Pubs Code, in particular the MRO lease obligation. Most tenants agreed, however, that relationships had been deteriorating for tenants since before the Tied Pubs Bill and the pandemic.

Churn in tenants is a major problem that they hoped the Code would address.

MRO leases were seen as the key to stopping the churn and introducing stability, but the obligation must be correctly set out in the Code and include the following requirements:

- Automatic lease renewal.
- Ability to apply for MRO lease before the rent review.
- Avoid rigid exemption periods after a MRO lease request has been turned down.
- Recognise MRO leases might not be for everyone, especially inexperienced operators.
- The negotiation period must be strictly time limited.

Substantial investment by the pub-owning company was viewed as the only valid reason for an exemption to the MRO lease obligation.

Tenants were aware that companies needed a period of time, generally three to five years, to realise a return on their investment. A substantial investment was defined by tenants as something that changes the nature of the business and aims to bring in more revenue. General maintenance and fixing wear and tear, while often very expensive, would not count as substantial.

Tenants were generally against a blanket, rigid exemption period and felt it should be tied to the performance of the investment and have some flexibility. If the expected return on investment happens in a shorter than anticipated timeframe, this should correspondingly shorten the exemption period.

Guest beer agreements need to be about supporting local small brewers.

The main attraction of guest beer agreements for tenants was about supporting local brewers and the wider local economy, rather than the financial benefit to their business. They did not want a situation whereby the big brewers used guest beer agreements as a tool to expand their market share. Some tenants stressed that it needed to include keg as well as cask beers.

The wording of the Code needs to make it clear that the guest beer agreement is not at the company's discretion.

Some tenants believed it needed to be clear in the Code that the guest beer agreement was not a matter for negotiation but something that tenants had a right to.

Arbitration needs to be binding. The Adjudicator role and arbitration process were welcomed. Some were keen to stress the importance of making sure the decisions of the Adjudicator are binding on both parties.

Clarity is needed in the Code on what can and cannot be dealt with via arbitration. Some operators were concerned that the arbitration process needed to be protected from frivolous use particularly over issues that are clearly dealt with in leases. Dilapidations was seen as very important to take to arbitration if necessary.

Strong provisions for Business Development Managers (BDMs) are needed in the Code. Tenants raised concerns about the requirements for BDM training in the voluntary code which states they need to receive training within two years of taking up the role. They felt that training needs to be sooner, more detailed and in-depth, and the requirements need to be set out in the new Code.

4. Research findings: Current relationship with pub companies and initial thoughts on the Code

This chapter addresses the nature of pub tenants' current relationships with their landlords (i.e. their pub owning company), where they currently look for advice and guidance, and their general views on the proposed Scottish Pubs Code.

4.1 Current relationship with the pub-owning company

Larger operators tended to report better relationships overall with their landlords than smaller operators, although all operators noted that relationships had become more difficult recently. Key sources of tension were the perceived uncertainty around the Tied Pubs Bill and the content of the new Scottish Pubs Code (especially MRO leases), and for smaller operators especially, the ongoing pandemic and the way pub-owning companies had responded to it.

[“If we have obstacles or problems both landlords take a fairly pragmatic approach... dealt with others in the past, can be a bit prickly... comes down to the individual... policy and procedures have changed dramatically at the moment.”](#) – Pub tenant

These issues appeared to have negatively impacted even previously good relationships. The uncertainty over the Code was felt to be hampering investment and reducing the number of tenancies available, with operators reporting a drawing back of investment and withdrawal of tenancies.

[“We had a great relationship with our landlord for years now, had planned investment, a five-year lease on a new site. Then uncertainty on the Code came in, had to refurbish the pub ourselves in the last lockdown. It's hard at the moment, getting back open with all the restrictions.”](#) – Pub tenant

[“I mean there are a lot of pubs out there that need a lot of investment, they're not willing to invest and everything is hinged on the pub code... taking pubs back from tenants that have done a fantastic job for 10-15 years.”](#) – Pub tenant

Smaller operators suspected that the pub-owning companies might not always be acting in good faith regarding the uncertainty around the Code and using it as an excuse to bolster their own position. They felt that the approach of pub-owning companies had started changing before the Tied Pubs Bill and the pandemic, and appeared to be increasingly driven by a short-term model of high tenant turnover and a focus on maintaining rent levels. Partnership and negotiation around rents was seen as lacking nowadays, and the relationship generally balanced away from tenants and towards pub-owning companies.

“They’ve been very commercial... they’ve become a property company, it was a case of churn the tenants, if they’re not happy with the rent we’re not going to negotiate, we’re just going to churn them out, replace them. Invest in pubs, turn them over. No negotiation, no real partnership – it’s changed over last few years.” – Pub tenant

“They’re stalling on basic maintenance and they’re blaming it on the Tied Pub Bill. A fast turnover of tenants; they’re investing not for tenants but to keep the pub at a level whereby they can get the next tenant in and move it on. It’s corporate business but against the spirit of UK and Scottish pubs. They claim it’s the bill but this has been happening pre-pandemic, since 2003.” – Pub tenant

Smaller operators noted that rent reviews seemed to be the trigger for tenants leaving their businesses, and that being able to get by with a tenanted pub business alone was becoming more difficult. This could be making the business less attractive to younger entrepreneurs as even successful tenants, in their view, were often finding their tenancies were not being renewed.

“For new people coming in the relationship is all singing, all dancing but further down the line especially when they get to their first rent review that’s when you notice there’s a lot of tenants coming out, and when they give the keys back they lose everything. Common for people is to have businesses other than the pubco tenancy because we couldn’t sustain it on its own.” – Pub tenant

Where leases and renewals are offered, they increasing tend to be short according to some of the tenants involved in the research.

“Even successful businesses aren’t getting lease renewals – 1-3 years at most is offered. Pubcos are blaming it on the Tied Pubs Bill uncertainty, using it to manage people out of the business.” – Pub tenant

The overall picture, then, was of a changing, somewhat unbalanced relationship. For smaller tenants especially, these changes could not be put down simply to the pandemic or the Tied Pubs Bill, although these are factors. Rather, they felt that the relationship has been tilting away from tenants and in favour of pub-owning companies for some time.

4.2 Sources of advice and guidance

Who tenants would approach currently depended to an extent on the type of advice or guidance required. For help on the promotional side, or around licencing and regulation, Business Development Managers (BDMs) were viewed by some as helpful. However, for the smaller operators in particular, BDMs were very much seen as the face of the pub-owning company so there was a limit to what they would be willing to discuss with them.

“BDMs are good if you’re asking for promotional help for the business. Anything business-related I’d go to my solicitor, SLTA or an accountant, not the pub company.” – Pub tenant

There was some concern that sharing concerns with BDMs could result in negative consequences for the tenant rather than help.

“The way rent arrears was handled in the pandemic where we were given only six weeks to pay back a lot of money – you’re reluctant to share concerns with BDMs because alarm bells start ringing and they put you on cash with order meaning you have to pay for beer from the company up front.” – Pub tenant

Generally, advice and guidance was sought outside the pub-owning companies. Tenants mentioned the SLTA, hospitality bodies, and also online forums for tied tenants that have emerged during the pandemic and provide a space for them to share concerns and advice in confidence.

“A positive thing about the pandemic is that a number of forums have emerged online for tied tenants and other types of landlord, and they provide support, advice, you can double check facts and what you’ve been told. Many forums try to ensure there’s no-one from the pubcos on them.” – Pub tenant

4.3 General views on the Scottish Pubs Code

Smaller operators in particular strongly welcomed the code and looked forward to it being transformational for the industry. Larger operators were more cautious, with much of this caution centred on the current uncertainty and need for resolution. The view was that the proposal for MRO leases was the key driver of uncertainty that pub-owning companies were reacting to. This is discussed in more detail in the next chapter.

Those welcoming the Code looked forward to a rebalancing of the relationship with pub-owning companies and a recognition of publicans as professionals, businesspeople and contributors to the economy. This in turn could make the industry more attractive to young people and foster longer-term, stable careers in hospitality.

“The Tied Pub Bill will be great for everyone in the industry in the long term, but the pubcos just need to learn to cut their cloth a bit differently... To attract in young people who really want to go long term in the business you need to be able to be free to buy your beer where you want. They forget we’re the customer, we pay tax, employ people, contribute to the economy, so there needs to be a professional relationship with the pubco and BDM.” – Pub tenant

The right to request a MRO lease was seen as the key tool in rebalancing the relationship, providing tenants with real leverage. This is discussed in more detail in the next chapter, but it is worth noting that it emerged spontaneously as highly important early in the discussion.

The office of the Adjudicator was also viewed as highly significant. Tenants looked forward to fairer rent negotiations with pub-owning companies and better deals being offered.

“We’ll have someone to listen to us and to approach if we have an issue with rent.”
– Pub tenant

Longer term, they believed that the greater stability afforded by a fairer relationship with pub-owning companies would release them to invest more, including in training staff and raising the status of hospitality as a true profession.

“In France hospitality is seen as a profession – with the new Pub Code it frees us up to invest in staff. Getting a fair deal on rent and costs and levelling up between pubcos and tenants means we can invest in staff as professionals. Hospitality is a profession, people stay in it a lifetime.” – Pub tenant

“It will swing the balance of negotiations and will mean they have to come to the table with fairer deals, it’s as simple as that... It gives us more of a bargaining tool that we can ask for an MRO.” – Pub tenant

While hopes for the impact of the Act and the Code were high, a key concern was around automatic lease renewal for MRO leases. Rolling leases, where the lease automatically rolls over if the tenant has been fully compliant, were seen as crucial in enabling tenants to invest with confidence. Tenants were keenly aware of the issues faced in England and Wales since the introduction of their Pubs Code, which they generally viewed as flawed. Whilst England has a Landlord and Tenant Act that mandates rolling leases, at least one tenant reported that in practice this was not always happening and that rent and lease negotiations could be protracted and crippling for tenants. They were anxious to avoid a similar situation in Scotland.

“The concern is that in England where they’ve taken the Landlord & Tenant Act out of the lease, there is no automatic lease renewal – you can invest lots of money in a 10-year lease then have no right to renew another 10 years, assuming you’re compliant with the lease. So there’s a risk that this could happen with MRO leases – you get punted out at the end of the lease.” – Pub tenant

“It’s not worked so well in England with rent disputes getting tied up for months and months in a legal process, whereas these are things that need to be sorted quickly. The legal process can destroy a business, many guys stuck in this process might end up out of business.” – Pub tenant

5. Research findings: Market Rent Only (MRO) leases

This chapter addresses pub tenants' views on the requirement to offer MRO leases and how this should be governed in the Code.

5.1 Overall views, concerns, benefits and drawbacks

The smaller operators who participated in the research were very enthusiastic about MRO leases and viewed it as a potentially transformational development, providing greater leverage in relations with the pub-owning companies and the subsequent freedom to invest and run their businesses as they saw fit. It should be noted however that these operators were on FRI (Full Repairing and Insuring) leases, meaning they had a large degree of responsibility already, with the main link to the pub-owning company being the keg beer tie. Small tied operators with leases whereby the pub-owning company assumed responsibility for insurance and repairs may have a different perspective.

The larger operators were more cautious about MRO leases. Whilst potentially a good thing for many, they worried that the benefits of MRO leases may not materialise for some small operators particularly when it comes to repairs and maintenance, and they may miss the financial backing of a pub-owning company. Some worried that the MRO lease option would be little different from FRI, leaving the small inexperienced operator with potentially large liabilities and relatively little influence.

“One little pub, something happens to your roof, where’s the money coming from? Hard for the guy in the small pub. The problem is that if something material breaks, they won’t be able to borrow 10 or 20 thousand pounds.” – Pub tenant

One operator of multiple premises also made the point that sourcing your own beer and getting good deals is difficult for a small independent pub.

“I’ve had vans on the road trying to get beer [due to current beer shortages], the deals aren’t that good. We don’t have the buying power, not like the breweries. Even as a multiple. So people with one pub don’t have a chance.” – Pub tenant

While not completely hostile to the idea of MRO leases, then, larger operators were concerned that they would be seen as a panacea for some would-be publicans and tenants looking for a change. Above all, however, they wanted the MRO lease provisions in the Scottish Pubs Code to be finalised as soon as possible to end what they viewed as a damaging period of uncertainty.

The smaller operators on FRI leases, both experienced publicans, were personally enthusiastic about MRO leases and would consider them for their own businesses.

Unlike some of the larger operators they saw MRO leases as significantly different from the FRI lease.

“We’d definitely consider an MRO lease. We buy barrels from [large brewer] and they make £82,000 ‘wet rent’ from us without factoring in the £60K rent we pay. With an MRO I could get a much better deal saving as much as £75 a keg which nets back a huge amount to me that I can invest. We have a repair and insure lease, all these costs fall to us, so there’s no benefit to us to be tied to someone.” – Pub tenant

A key concern was around triggers for MRO lease requests. Smaller operators felt strongly that these should not be tied to the five-year rent review and should be available more frequently than once every five years. In particular, returning to the concerns around automatic rollover of leases, they felt that a MRO lease request should always be an option at the end of a lease period, providing the tenant has been compliant. The MRO lease itself should also automatically roll over, again providing the tenant has been compliant.

“You wouldn’t want the 5-year rent review to be the only trigger for an MRO request – we’ve just had a rent review, it’s 5 years until another one, [we] wouldn’t want to be forced to wait that long to request an MRO... It needs to be within x months of the start of a lease, or twice yearly etc. Not 5 years. It should be automatic at any point during and especially at the end of the lease – because people often just don’t get their leases renewed.” – Pub tenant

It was also viewed as important that the process of applying for a MRO lease and receiving a decision be strictly time-limited. As noted, operators were well aware that lengthy wrangling can seriously harm a business.

“It should just be a process where the MRO can be requested and it goes through within a set timeframe – not getting tied up for months. It’s important the process is set in terms of weeks or months, time limits.” – Pub tenant

5.2 Exceptions to the obligation to offer a MRO lease: Substantial investment by the pub-owning company

All the tenants we spoke to believed the main, and often only, reason for an exception to the obligation to offer a MRO lease was if a substantial investment had been made by the pub-owning company. Many mentioned this spontaneously. Unpacking this, tenants explored how they would define ‘substantial’, and viewed it in terms of the amount of money spent but also the nature of the work and the impact on the business. In short, routine maintenance could be very expensive but might not count as ‘substantial’.

“We call it a ‘tickle’... painting and decorating, changing things like the fixtures and fittings can make a pub look different but it’s not substantial.” – Pub tenant

“Contractors are extortionate, what we call a ‘sparkle’, a lick of paint and some signage, recovering of seating... Also a ‘ready to let’ investment just to make sure everything is compliant – they can throw £100,000 or £150,000 at that alone.” – Pub tenant

Looking at the types of work, ‘substantial’ tended to be viewed as something that changed the nature of the business in some way, bringing in new or increased revenue.

“It has to be defined as a transformational investment, a partnership investment... stuff that requires planning consent and licensing consent tells you it’s substantial alternations to the property, that’s good indicators it’s decent money.” – Pub tenant

“As soon as contractors come in and you’re having to close, that’s substantial, so new floors, new walls, changing the layout, an outside area. Things the business can realise extra revenue from e.g. a new seating area, a new food area – the pubco invests in it and everybody gets a bit extra.” – Pub tenant

Routine or essential maintenance – e.g. a roof repair, repainting the premises, re-upholstering or replacing tables and chairs – would not count as substantial because it does not change the business in any way.

“Things like replacing beer pythons and remote coolers – that’s just wear and tear, you expect it when you’re putting 300 barrels through lines, after a while that system’s going to give up.” – Pub tenant

Tenants appreciated that pub-owning companies required a certain amount of time to realise a return on investment. This was generally seen to govern the length of time an exception to the MRO lease obligation should last. Around three to five years was broadly accepted as a reasonable time for pub-owning companies to see a return on investment.

“There’s no other reason other than investment from the landlord or pubco why people shouldn’t be able to get a MRO. Most businesses look for ROI in 3-5 years. After that there should be an option fairly quickly and without debate to go for a MRO or request another investment if the tenant is happy with it.” – Pub tenant

However, some believed that this should not be rigid. The performance of the investment could be monitored and the investment treated as a kind of loan, so if the investment outperformed in terms of generating returns during the three to five year period that could bring forward the end of the exemption period for requesting a MRO lease – an early waiver, in other words.

“In terms of MRO exemption, the investment should be seen like a loan – so if the investment overperforms you’d be able to pay back that ‘loan’ quicker and thus go for a MRO sooner.” – Pub tenant

“The waiver needs to reflect the amount of money that is going to be spent. [It] needs to be calculated on return on investment.” – Pub tenant

5.3 Other potential exceptions

Participants were also asked about the following potential exemptions to the requirement to grant a MRO lease on request:

- uninvested sites at the start of tenancies;
- very short tenancies; and
- for a period of time after making a MRO lease request

Regarding uninvested sites, tenants were generally against exempting these for experienced operators, although they could see why an exemption would make sense for less experienced businesspeople. An uninvested site could be especially appealing to an experienced businessperson if they have the freedom of a MRO lease to realise the site's potential in the way they see fit.

“Fewer experienced people are coming into business due to restrictions and lack of autonomy, so uninvested sites would be appealing to prospective experienced businesspeople on a MRO basis if they can see the potential of the site.” – Pub tenant

Offering MRO leases for uninvested sites, at least to experienced businesspeople with a track record, could also benefit the pub-owning company by removing expense and freeing them up to focus on their strengths, in the view of one pub tenant.

“It would be a good deal for the pubco as we would pay them rent and double the barrelage. It takes expense away from pubco and they can focus on what they do best – sell beer and help promote the business. Let us come in and make it viable, make it profitable. And when I retire they have a viable business to lease out again.” – Pub tenant

Views were mixed regarding exemptions for very short tenancies. Some thought it was reasonable as a year-long tenancy would give both sides, tenant and company, the opportunity to know the suitability of the tenant and the nature and viability of the business. Then a more informed decision could be made by the tenant on whether or not to apply for a MRO lease.

“A year is perfectly acceptable, so everybody knows the deal.” – Pub tenant

However, many were concerned that such an exemption would accelerate the unwelcome trend amongst pub-owning companies noted earlier towards offering only short tenancies. In order to avoid the obligation to offer a MRO lease, pub-owning companies may be tempted to offer only very short tenancies if they were exempted.

“It’s open to manipulation by pubco – if there is an exemption, they will only provide short leases with no MRO option. There’s no obligation to offer a long tenancy. That would be a MRO killer essentially.” – Pub tenant

For less experienced operators on a very short tenancy, an exemption would make sense. As one tenant pointed out, under a MRO lease there is no access to a BDM, who many felt was most useful for people new to the business. However, again, the freedom of a MRO lease for a very short tenancy could be attractive to experienced operators.

“Short tenancies are usually offered because the previous tenant hasn’t worked out. So a MRO on a short lease is a great opportunity to test the water and for guys like us – experienced operators.” – Pub tenant

Tenants were asked for their views on an exemption for a period after making a request for a MRO lease. Some felt that some kind of restriction was needed to avoid numerous repeated requests ‘chewing up resources’ as one tenant put it.

“I think there should be a minimum period, at least once every three years. Annually would be problematic. It will chew up resources.” – Pub tenant

However, many felt there would need to be flexibility and exceptions reflecting the fact that material circumstances can change at any time. The approach should allow for negotiation and mutual consent rather than be strictly rule-bound.

“Things can affect your business, then you’ll want to be in a MRO, it needs to be a mutual agreement. Things change and you can be eligible later. You would still need that clause in it – you can only apply once in a five-year period, unless there’s a material change.” – Pub tenant

Some also stressed that from the tenant side, requesting a MRO lease implied a serious, long-term commitment. It was something that for most would not have been considered lightly.

“Requesting a MRO implies a serious long-term commitment – it’s saying ‘we ain’t going away any time soon’.” – Pub tenant

5.4 Information required prior to requesting a MRO lease

Tenants listed a number of things they would need to know in advance relating to the nature of the lease and the previous performance and viability of the business. Two essential pieces of information were an assurance that you would be completely free of a beer tie, and an understanding of what the market rent should be, preferably based on a source of information other than the pub-owning company.

“You need to know if you’re free of beer tie in that you can go to anyone e.g. your local brewers and mainstream brewers. As long as we know we can go to the open market for our beer.” – Pub tenant

“We need to know what the market rent is. [We] would rather not get that information from the pubco – we’d pull in an estate agent or solicitor. If there’s no agreement on market rent it needs to go to somewhere independent to decide – not the pubco, not attached to our business either. An independent body that assesses the fair market rent transparently.” – Pub tenant

One tenant said that it would be key to ensure it was not a ‘put and keep’ lease whereby you are required to put the property in a reasonable condition and keep it there.

Looking at the business side, a transparent history of maintenance costs was important for prospective MRO leaseholders to know as they considered likely costs in the future.

“Transparency and cost for maintenance... what the costs have been for the landlord for compliance and maintenance... that gives you a clear indication of what you’re gambling with.” – Pub tenant

Previous performance in terms of sales was also important to factor in to considerations.

“If I’m taking on a new business I’d need to know how many barrels has it done previously.” – Pub tenant

Other information mentioned as important included:

- Assurance that the building and contents meet all codes and legislation (including gas and electricity certificates)
- Previous copy of the dilapidations report (one tenant was concerned that pub-owning companies are “notorious at charging people for dilapidations but not actually doing them” so proof that the work had actually been carried out was important)
- Schedule of condition of the property prior to moving in
- Any impact on the amount of insurance to be paid

Regarding unreasonable terms for a MRO lease, some mentioned liability for building issues. If there was a fault that was present but not apparent when the MRO lease was signed, it should not automatically be the responsibility of the tenant. In their view, the onus needs to be on the pub-owning company to ensure the premises are safe for trading.

5.5 Timescale for negotiating a MRO lease

All tenants were clear that timescales and milestones for the process were crucial to prevent negotiations dragging on and ultimately damaging businesses. Three to six months was generally seen as a reasonable timeframe from the application to signing the lease. Despite some debate, overall, six months would be acceptable to most as an absolute maximum timescale.

“I think six months is reasonable otherwise they will string it out. It ties in with the notice period too.” – Pub tenant

There was some debate over whether three months was too short a time or not. Some were concerned about whether there would be the resources available in terms of adjudication and oversight to deal with this shorter timeframe.

“Three months is too short a time, [there] would have to be a whole stream of adjudicators. Are there enough surveyors to cope? With the six months, you have to set out a time frame for each part of the process, you need to allow that sometimes tenants will push it back and it will go to the adjudicator.” – Pub tenant

The smaller, experienced operators erred towards a shorter timescale of three months. One tenant broke down the potential timetable as follows:

“The timescale needs to be on how long it takes to get an offer back from the pubco – a month seems reasonable to me. Once you apply they need to come back with an offer within the month. The whole thing needs to be concluded in three months as there will be to-ing and fro-ing. Also you need to allow time to get an independent person in as well.” – Pub tenant

Smaller operators were especially concerned about pub-owning companies ‘dragging out’ negotiations and claimed that this is what had happened in England. Interestingly, at least one tenant blamed this on pub-owning companies in England insisting on negotiating a completely new lease rather than simply altering the existing lease.

“There has to be a timescale. In England, negotiations have been dragged out by pubcos insisting on a complete new lease for a MRO whereas it could easily be done by a deed of variation on the existing lease.” – Pub tenant

Consequently, the preference for smaller operators especially as far as the Scottish Pubs Code was concerned was for deeds of variation to create a MRO lease (i.e. altering the existing lease) rather than negotiating a new lease.

“You can do literally anything with a deed of variation. All you’re taking out is two things – the tie and the deposit amount because a deposit applies to a commercial agreement and is usually three months in advance.” – Pub tenant

6. Research findings: Guest beer agreements

This chapter looks at tenants' views on guest beer agreements, their importance, how they would use them, and how they should be covered in the Code.

6.1 General views on guest beer agreements

Whilst the provision was broadly welcomed in principle, tenants wanted to see a lot more detail on how this requirement would work for them. A key concern was around where the guest beer could be sourced from. All tenants felt strongly that the main point of guest beer agreements was – or certainly ought to be – to help local small-scale brewers, especially microbreweries, and that this needed to be set out in some way in the Code.

“It’s hard to be local, so the size of the brewery you’re supporting is important. [It] shouldn’t be about freeing you up to go to Tennents and Heineken.” – Pub tenant

Some also felt there needed to be some requirements in the Code around ensuring guest beers are rotated and not just a single beer or brewery used indefinitely.

“There should be rotation, somebody can push for it. You should make it part of the lease, that you can’t put a beer on the bar forever.” – Pub tenant

The potential economic benefits of guest beer agreements were felt to accrue mainly to the local breweries and wider local community. Tenants were quite happy about this and were enthusiastic about guest beer agreements for this reason rather than for the financial benefits to themselves. They welcomed the chance to support local brewers.

“It’s not that important for our business, but it’s a nice-to-have to help the micro-breweries. It’s good for local communities but won’t make any difference on [tenants’] profits.” – Pub tenant

“Realistically guest beer agreements are of most benefit to the local economy – it gives local brewers hundreds of shop windows to put their product in. They don’t need to market it – we put the product on the bar and away we go, we’ve marketed it for them.” – Pub tenant

Some also felt that local beers were something that customers increasingly demanded and expected nowadays, so guest beer agreements were increasingly relevant.

“All our hand-pulls are independent brewers. Customers demand it, tourists look for it. It helps you to create strong local connections which last years.” – Pub tenant

One tenant made the point that the Code needs to be careful with the definition of 'microbrewery' – in particular, not all craft beers come from microbreweries.

“There is a definition of a microbrewery, you have to be careful as it's not the same as craft.” – Pub tenant

One tenant raised a concern about how the guest beer agreement provision was to be worded in the Code. In their view, the Code needs to make it clear whether this is an obligation on the part of the pub-owning company rather than something they can 'allow' tenants to do at the pub-owning company's discretion.

“The wording concerns me – pubcos will 'allow' tenants to enter a guest beer agreement. Are we not saying this is going to be standard in every single lease agreement, or will you need to negotiate that with the pubco? It needs to be in every agreement no matter what.” – Pub tenant

Tenants generally felt it was important that they were able to source their guest beer directly from the supplier if they wished, rather than through the pub-owning company.

“It has to be direct, pub companies would take too long and they wouldn't be interested.” – Pub tenant

One tenant added that given ongoing beer shortages, having the ability to source the guest beer themselves could be an advantage in terms of reliably securing supply rather than relying on the pub-owning company's supply chains. This made particular sense to them given the strong feeling that the guest beer agreements should be about sourcing from local breweries.

Another key concern voiced by the two smaller operators on FRI leases was that the Code needed to specify whether the guest beer agreement covered keg beers rather than just cask beers. Under the terms of their leases they were already free of tie for cask (hand-pull) beers with both tenants focusing exclusively on local beers for their cask range. However, they are tied regarding keg beers, so the ability to choose a guest beer on keg would be a step forward for them.

“All our cask is local beers but only one Scottish product keg wise, so this would allow me to grab more of that market and support local businesses. People are more and more supporting local products.” – Pub tenant

6.2 Selecting a guest beer

All tenants said they would support local small brewers and were keen that the guest beer agreements should not be used by the big brewers to take even more market share.

“It's got to benefit the smaller micro-breweries or else the big ones will keep making money and taking more share of the market.” – Pub tenant

As mentioned, some felt that the provisions in the Code needed to include keg beers. They noted that many pubs cannot currently operate casks so in order to have an impact across the whole sector, including keg beers was crucial. They explained the potential impact generally and to their own business specifically.

“It needs to refer to keg as that will hit the majority of the Scottish estate – many can’t operate cask – and it needs to be local-ish and a smaller brewer. They are moving towards keg as it’s pasteurised and lasts longer. Just now, [major brewer] have a lot of control over my range of keg beers – any investment you do with them at the moment would mean you have to take out all their ‘red’ brands i.e. the competitor products. So any agreement I could have that would mean I could take a keg product from a local brewer would be great for us and our customers.” – Pub tenant

One tenant wondered whether specifying the requirement as a ‘minimum of one beer’ in the Code was the best way to do it. There were no definite ideas about how else it could be specified other than possibly as a percentage of beer sold – so for example tenants could be allowed to make up to 10% of their beer sales with a guest beer outwith the tie. Tenants acknowledged that this would raise issues around monitoring flows, but felt it was worth exploring. The concern with specifying a minimum of one beer was that pub-owning companies would deliberately try to restrict it to one beer, especially with tenants who were less adept at negotiating.

“If we word it ‘minimum of one’ it will only be one – it’s all very well to say people can negotiate but in reality many are inexperienced and will struggle to negotiate above one guest beer. [It is] hard to know how else to word it in the Code – maybe state it as a certain percentage of your overall bar offer can be guest beers.” – Pub tenant

6.3 Effect of guest beer agreement on rent and Flow Monitoring Equipment

Some felt that the guest beer agreement shouldn’t affect the rent, as the point of it, as discussed previously, was more to support the local economy rather than bolster their own takings. Moreover, they felt that the spirit of guest beer agreements was also about ‘rebalancing the scales’ between pub-owning companies and tenants.

“The point for us is not to buy the cheapest beer but to support a local business. The whole point of this is about rebalancing between publican and pubco and where the money goes. Currently the money goes 90% pubco 10% publican which means publican investment is limited or they have to go to the pubco to get investment in their business. We need to rebalance the scales and the guest beer agreement is a small way of doing it... Pubcos make staggering margins on some pubs.” – Pub tenant

Others felt that it was inevitable that guest beer flows would be monitored in some way by the pub-owning company, if not directly then by looking at impacts on flows of the tied beers that are monitored. They accepted that pub-owning companies may then have some justification for charging a fee.

“It comes down to volume. They will monitor it anyway. They’ll see less of their beer being sold, if the guest beer hits a certain amount of barrels. Then they can charge you a fee.” – Pub tenant

Overall the effect on rent was considered an important area to consider in terms of the Code. One tenant pointed out that until several years ago, pub-owning companies took 50% of the income from gaming machines in pubs; this was stopped as it was deemed unfair. They also pointed out that current rent models already account for beers outwith the tie.

“Current rent models from pubcos include a ‘free of tie’ line (as well as standard lager, premium lager) so they can then factor in what price you might get for a local product.” – Pub tenant

7. Research findings: Arbitration

Arbitration was deemed a lower priority for this research, so was only covered in the first workshop. No-one in the group had used an arbitration service, either PICAS (Pubs Independent Conciliation and Arbitration Service) or their own landlord's processes, so they were unable to comment from experience. Two of the three participants had heard of PICAS before.

7.1 General views about arbitration and what it should cover

It was seen as important to have access to independent arbitration in order to prevent rent and lease negotiations dragging on, as noted earlier in the report. Overall, the key things that tenants felt the Code should cover clearly was circumstances when arbitration was and was not appropriate, and costs to the publican.

However, some concerns emerged that tenants felt needed to be addressed in the Code. Firstly, fees for tenants needed to be capped, although fees were accepted as important to prevent the system from being abused for petty grievances, as long as they were not prohibitive.

“The tenant can be liable to pay fees and expenses, but that has to be capped. You don't want it becoming a moaning system. You can put fees in place, but not to put you off going for it.” – Pub tenant

“£500 would be enough to stop petty things but not enough to put you off if you really wanted to go for it.” – Pub tenant

Tenants did not see the need however for a cap on pub-owning companies' costs given the resources at their disposal.

“There's no need to cap the costs for the company, they have lawyers on rotation, we don't have that.” – Pub tenant

The main challenge according to tenants would be how to prevent the arbitration process being used for frivolous complaints; for example, where a matter is clearly laid out in the lease but the tenant decides later that they don't like the provision.

“Say for example it's set out in the lease they've signed that the tenant is responsible for sorting the windows but they decide they don't want to do that and want to chance their luck and go to arbitration. Stuff like that would end up clogging up the system.” – Pub tenant

While tenants were keen that disputes over repairs where the lease agreement was clear on responsibilities should be excluded from arbitration, they were keen to differentiate between repairs and dilapidations.

“We should exclude things to do with repairs, but dilapidations should be covered. They’re often a source of dispute that need legal input.” – Pub tenant

A Schedule of Dilapidations is a lengthy and often highly detailed legal document. Dilapidations are essentially exit costs for tenants which are attributed to putting the property back into its original pre-let state, and are indeed a common cause of disputes at the end of a tenancy. Tenants were of the opinion that arbitration must therefore be available for disputes over dilapidations.

“The Code needs to set out what arbitration won’t deal with as much as what it will, and the thing it should definitely deal with is dilapidations, that’s the biggest bone of contention in my experience.” – Pub tenant

“It’s the biggest cost... I’ve seen people bankrupt, lose their house and everything over dilapidations.” – Pub tenant

7.2 Setting out the arbitration process in the Code

As detailed above, the main concern of tenants was that the things the process can and cannot cover should be set out clearly in the Code. Costs and fees should also be clearly detailed. Apart from that, tenants emphasised the need for the process to be set out clearly and in plain English. Case studies and practical examples of where arbitration has been used and what happened would also be useful to give tenants a feel for what the process would be like in ‘real life’.

“Case studies, where they show you something and say this is what might happen, this is a scenario where you might ask for arbitration because a lot of people with a wee pub might not know what to expect.” – Pub tenant

Tenants also stressed that the pub-owning company needed to be completely transparent with the Adjudicator in their workings in relation to the dispute. They also wanted more detail on the Adjudicator and whether their findings would be legally binding.

“Is the adjudicator going to be an individual or a panel, and are their findings legally binding on both parties or can [either party] go ‘no, I’m going to law’?” – Pub tenant

The view was that the Adjudicator’s decision should be binding, otherwise disputes could still end up in a protracted legal wrangle which would favour the party with the greater resources:

“My view is that arbitration should be final and both sides should accept the result. Otherwise whoever has the deepest pockets will take advantage of legal actions which could tie it up for ages without getting a result so both parties can move on.” – Pub tenant

8. Research findings: Scope of the new Scottish Pubs Code

This chapter discusses tenants' views on what the new Code should cover overall. The discussion looked at the current voluntary Code in Scotland and what elements of that were most important to include in the new Code.

8.1 Views on the existing voluntary code

The voluntary code was seen as comprehensive and useful for new and inexperienced tenants. However for the larger, multiple operators it was felt to be an annoyance that they had to go through the same processes set out in the code whenever they took on a new lease.

“It’s great for new starts and new people coming into the trade, gives them a bit of grounding in their responsibilities, but for folks like us who have been in the trade a while, for multiple operators it’s annoying that we have to go down the same route as everyone else... The time I’ve got to waste drafting up documentation, almost like a cut and paste just to tick a box, it’s a nonsense.” – Pub tenant

Thinking about how the new Scottish Pubs Code could improve on this, they felt there should be a fast-track system for multiple operators.

“There should be a waiver for multiple operators at a certain level, a fast track rather than having to go through the same code they do with a single operator in the first pub they’ve ever taken on... I’m supposed to do the inside knowledge every time I take on a pub, and we take on three or four pubs a month.” – Pub tenant

Thinking about the form the waiver could take, one tenant suggested it could be a single document to sign confirming you understand everything that you are expected to according to the voluntary code, rather than having to draft all the basic documentation around knowledge and understanding of responsibilities.

In some scenarios the delays caused by the need to produce and file extensive documentation on basic things like safety and inside knowledge can potentially put jobs at risk, according to the multiple operators in the workshop. One offered a concrete example:

“Imagine a scenario where for good reason the tenant wants to give up the business immediately, for example if he’s diagnosed with cancer. If we were to step in to take that business on, there could be a delay of up to six weeks as we go through the safety and other documentation. That means jobs could be at risk... There needs to be a waiver where a multiple operator can walk in the next morning and pick up the business. Staff can be transferred over via TUPE.” – Pub tenant

8.2 Scope of the new Code

Tenants overall did not mention areas outwith the scope of the current voluntary code that need to be included in the Scottish Pubs Code, but they did pick up on some areas of particular importance, or areas that needed strengthening.

For the experienced small operators especially, the requirements for training of BDMs needed to be strengthened. They felt that young and inexperienced BDMs perhaps not receiving training until some time into the role were limited in the help and expertise they could offer seasoned publicans.

“[The voluntary code] is too weak regarding training requirements for BDMs. It states they must have training within the first two years of becoming a BDM. It needs to be much sooner and this should be set out in the new Scottish Pubs Code. They need better training and sooner, not just a core skills course. [They] need formal qualifications before or very early on in the role.” – Pub tenant

Some tenants blamed the voluntary code for restricting the freedom of BDMs to act autonomously. There could be scope for scaling back the new Code here to allow pub-owning companies to give BDMs freer rein again.

“You find they’re saying ‘I’m sorry, I can’t do that anymore’. It’s too regimented, there’s no movement any more.” – Pub tenant

Other tenants said that the Code needed to clearly cover the specification of premises at the start of a lease “so [the tenant] understands what they’re getting into”.

One concern that emerged spontaneously among the multiple operators was whether there was a lower limit in terms of number of premises owned below which the new Code need not apply. They felt that making the Code obligatory for the smallest operators could be too onerous for some.

“I’ve heard the lower limit is going to be three. That’s bonkers... there are people who have bought two or three pubs for a pension fund and you’re asking them to go through this pub code, now that’s just nonsense.” – Pub tenant

Multiple operators were aware that the lower limit in England and Wales is 500, and although they agreed that the limit in Scotland should be considerably lower given the smaller number of pubs here, there was some debate over what that limit should be. Some felt that 50 sounded sensible, but others felt that more discretion was needed than simply an arbitrary number.

“You need to look at the operators, who has got the resources, because you don’t want to trap a lot of small operators who don’t have the resources to be compliant with new requirements.” – Pub tenant

9. Research findings: Impact of the Scottish Pubs Code on the business

This chapter discusses tenants' views on how the Code will impact on their business and the wider sector. Overall, the new Code was seen as potentially transformative, bringing stability and security to the sector, stemming the churn of tenants, forcing pub-owning companies to act more fairly, encouraging investment and generally raising the status of hospitality and the quality of the people in the business.

In the short term, however, the potential amount of paperwork and red tape required for compliance and the ongoing uncertainty around the provisions of the Code, especially in relation to MRO leases, were a major concern for the operators of multiples.

“Right now it’s taking businesses off me with the company removing tenancies.” – Pub tenant

For the smaller operators, however, the prospect of MRO leases was seen as the most significant factor in the new Code, with the potential to be transformational for their own businesses and the wider sector. In their view the greater leverage in negotiations with the pub-owning company afforded by the obligation to offer a MRO lease on request should stop the churn of tenants and attract people who genuinely want a long-term career in hospitality. This greater stability in turn would make the banks more amenable to providing finance, which would fuel investment – not least in training staff. One tenant summarised this potential virtuous cycle:

“If we were to get MRO it makes us free of tie and we pay a fair market rent – that would be transformational. Everything becomes a longer term project with larger investment. Banks would be much more amenable towards publicans. Over the last 10 years the banks have tended to shy away from tenants even with some kind of security and one key reason is the vast turnover of tenants over the last 15 years. This will slow down the churn. In 20-30 years there will be more guys like us who have been in the business 20-30 years. That will bring another level to the industry in terms of the experience, investment – making it easier to invest in and keep staff – pay them more, train them more which means it’s more likely to become a long-term and lifetime career for them.” – Pub tenant

Some tenants also noted that this would benefit customers and the community, as they value stability in their local pub and its staff.

The guest beer agreement also had the potential to bolster businesses and profitability, if done correctly.

“The guest beer will make the business more profitable providing the rent is not affected – which will give a leg up for those new to the business. This increased profitability will also help stop the churn of tenants.” – Pub tenant

As noted in the previous chapter on guest beer agreements, these would benefit customers by meeting the increasing interest in and demand for local beers.

10. Conclusions

Tenants have high hopes for the Scottish Pubs Code. They believe it has the potential to be transformative for the industry, driving investment, quality of tenants, recruitment, long-term careers, bolstering its status as a profession and rebalancing the relationship between tenants and pub-owning companies.

The MRO lease obligation was seen as the key tool in rebalancing that relationship from which all the other benefits would flow. Respondents felt it would give them real leverage in negotiations with the pub-owning company, forcing them to bring better deals to the table. This was the aspect of the Code that tenants most wanted to talk about. Getting it right is in their view absolutely crucial to ensuring the Tied Pubs Act fulfils its promise. In the short term, firming up how the MRO lease obligation will work in practice was also a priority, in order to end the current period of damaging uncertainty in the industry.

It should be noted, however, that the most enthusiastic supporters of MRO leases in the workshops were small operators already on FRI leases. The multiple operators were more conscious of the pitfalls of MRO leases for inexperienced operators especially and warned they would not be a panacea.

Relationships with pub-owning companies have suffered in recent times.

Larger multiple operators blamed uncertainty over the new Scottish Pubs Code, in particular the MRO lease obligation, for fuelling the decline in relationships. They reported a reluctance amongst pub-owning companies to offer new tenancies, a preference for offering short tenancies, and even tenancies being withdrawn. Smaller operators took a more cynical view that pub-owning companies were using the Tied Pubs Bill as an excuse to tilt relationships in their favour and hold back on spending.

Most tenants agreed, however, that relationships had been changing for the worse for tenants since before the Tied Pubs Bill and the pandemic.

Churn in tenants is a major problem that they hoped the Code would address.

All the tenants in the research commented on how the turnover of tenants has increased in recent years. They cited poor practice and short-termism by some pub-owning companies. They said that rather than negotiating rents with incumbent tenants at the end of a lease, it was common for offers to be presented on a 'take it or leave it' basis, resulting in the old tenant leaving and a new tenant being taken on, regardless of how successful the old tenant had been.

MRO leases were seen as the key to stopping the churn and introducing stability, but the obligation must be correctly set out in the Code. In order for MRO leases to deliver on their promise, the following requirements must be included in the Code, according to tenants:

- Automatic lease renewal. Leases must always roll over automatically providing the tenant has been compliant with it. Without this assurance,

tenants who take on a MRO lease may be more reluctant to invest if they think that in several years the business could be taken away from them regardless of compliance or performance.

- Ability to apply for MRO lease before the rent review. Tenants generally didn't see why the right to request and be granted a MRO lease should be restricted to the rent review. Once every five years was seen as too restrictive. Apart from a period of a few months after the start of a lease, the option should be available at any point, reflecting the fact that material circumstances can change at any time.
- Avoid rigid exemption periods after a MRO lease request has been turned down. Again, material circumstances can change at any time, and tenants felt that the ability to try again for a MRO lease should be tied to that rather than to a set time period.
- MRO leases are not for everyone. Larger operators pointed out that taking on a pub without the backing of a company can be hard especially for the inexperienced. It may be that thought should be given in the Code to ensuring that applications for a MRO lease are backed up with a credible plan and awareness of costs and responsibilities.
- The negotiation period must be strictly time limited. Tenants had a fear of protracted negotiations and legal involvement, which they had seen destroy businesses before, and which they believed was happening in England and Wales now. The Code in their view must set out a strict timetable for all the steps in the application process within an overall timeframe (no more than six months).

Substantial investment by the pub-owning company was viewed as the only valid reason for an exemption to the MRO lease obligation. Tenants were aware that companies needed a period of time, generally three to five years, to realise a return on their investment, so an exemption of up to five years after a substantial investment in the business was deemed reasonable by most. However, there was debate around two points that tenants felt needed to be bottomed out in the Code.

- What counts as a substantial investment? While tenants had views on the amounts of money usually involved in a transformative or substantial investment, they felt that the definition depended more on the nature of the investment and its impact on the business. 'Substantial' was defined by them as something that changes the nature of the business and aims to bring in more revenue – a new eating area or outdoor space for example. General maintenance and fixing wear and tear, while often very expensive, would not count as substantial as it does not add another dimension to the business.
- The nature of the exemption and how long it should last. Tenants were generally against a blanket, rigid exemption period and felt it should be tied to the performance of the investment and have some flexibility. If the expected return on investment happens in a shorter than anticipated timeframe, this should correspondingly shorten the exemption period. In a way this amounts to treating the investment more like a loan.

Guest beer agreements need to be about supporting local small brewers. The main attraction of guest beer agreements for tenants was about supporting local brewers and the wider local economy, rather than the financial benefit to their business. They felt the spirit of guest beer agreements was about supporting microbrewers and felt this should be honoured in the Code. Three key points emerged in relation to this.

- They did not want a situation whereby the big brewers used guest beer agreements as a tool to expand their market share.
- In order for the guest beer agreements to be available to all, some tenants stressed that it needed to include keg as well as cask beers, noting that small brewers are increasingly moving into keg products as they are pasteurised and last longer.
- Guest beer agreements should not affect the rent. Tenants felt this would be outwith the spirit of the guest beer agreements, and also the overall spirit of the Code which they saw as about rebalancing the relationship and financial benefits between the tenants and pub-owning companies.

The wording of the Code needs to make it clear that the guest beer agreement is not at the company's discretion. There was concern over the use of the word 'allow'. Some tenants believed it needed to be clear in the Code that the guest beer agreement was not a matter for negotiation but something that tenants had a right to. Moreover, there was concern about the specification of a minimum of one guest beer. Some worried that some companies would therefore only allow one guest beer, and felt that rather it should be stated as a percentage of the beer sold free of tie. They acknowledged that monitoring this would be challenging.

Arbitration needs to be binding. The Adjudicator role and arbitration process were welcomed. Some were keen to stress the importance of making sure the decisions of the Adjudicator are binding on both parties. Again, tenants were very keen to avoid anything that could lead to protracted legal disputes which tend to favour the party with the most resources.

Clarity is needed in the Code on what can and cannot be dealt with via arbitration. Some operators were concerned that the arbitration process needed to be protected from frivolous use particularly over issues that are clearly dealt with in leases and that some tenants, having signed a lease, decide they don't like, e.g. responsibility for certain repairs. Some tenants suggested a fee for tenants to use the arbitration system, carefully calibrated to not put off those with genuine reasons for using it. Dilapidations was seen as very important to take to arbitration if necessary, as the dilapidations report at the end of a lease is often a source of dispute.

Strong provisions for Business Development Managers (BDMs) are needed in the Code. Tenants raised concerns about the requirements for BDM training in the voluntary code which states they need to receive training within two years of taking up the role. They felt that this is too long especially for experienced operators for whom a young, untrained and inexperienced BDM may offer little added value.

Training needs to be sooner, more detailed and in-depth, and the requirements need to be set out in the new Code.

Appendix A: Workshop discussion guide

Introductions (5 - 10 mins)

- Welcome to the session
- Introduction by moderator to group and explanation of Market Research Society Code of Conduct.

Describe background to the research:

The overarching aim of this research is to get your views and opinions on the key elements of the proposed Scottish Pubs Code, what it should cover, and how it might impact your business.

- Zoom/Teams: The discussion will be recorded – so I don't have to take notes. It will only be used for the purposes of this research project. Check permissions for this.
- Anonymous – do not attach names. Pull all findings together and report it back on a group basis.
- Explanation of rules of engagement of discussion - take part
 - not a test
 - no right or wrong answers
 - just interested in your own views
- **Reassure:** only share what you are comfortable sharing
- Reiterate GDPR rules if required: Withdraw at any time, only share what you are comfortable with

Background warm-up

- Where are you based?
- Tell me about your pub/pubs:
 - Who owns it (pub-owning company)?
 - How long have you been a tenant?
 - Describe your business and clientele – location, when you're busiest, the type of customers you rely on
- What are your future plans regarding your pub tenancy?

Views on the Scottish Pub Code (10 mins)

Current relationship with pub-owning company

- Tell me about your relationship with the company that owns your pub
 - Probe on positives and negatives
 - How is your relationship governed?
- If you had any queries about any aspect your relationship with the company, where would you go for help and guidance? Why? Spontaneous then probe
 - Pub Sector- Scotland: Code of Practice
 - The company itself
 - Other publicans

- Representative body e.g. Scottish Licensed Trade Association or Scottish Beer and Pub Association

Initial thoughts

Just thinking first about the material provided before the workshop on the new Scottish Pubs Code.

- What did you think about it overall?
- Tell me how you think it will impact your relationship with the company that owns your pub? Probe for positives and negatives

Market Rent Only (MRO) leases (35 mins)

A key part of the proposed Code is to require the pub owning company to offer the tenant a MRO lease if they request it, subject to certain exceptions. Share slide below on MRO lease

Market Rent Only lease

The Code will require the pub-owning company to offer the tenant a MRO lease if they request it, subject to certain exceptions. The MRO lease offer must comply with the following:

- a) The tenant will only pay the market rent for the lease, to be determined jointly between the tenant and pub-owning company (if they cannot agree, the SG are exploring whether the Adjudicator can appoint an Independent Rent Assessor to decide the market rent)
- b) There will be no product or service ties included in the lease other than insurance - so for example no requirement to sell specific beers or other alcoholic drinks
- c) The legislation assumes the MRO offer should usually be made by varying the terms of the existing tenancy agreement rather than a completely new lease, and it should be varied only enough to make it an MRO lease (comment: this is likely to be an area where people have different views – it could alternatively be made by a new lease – might be useful to find out views on this and find out what would be preferable.

The Code may also specify a time limit on how long the negotiation of a MRO lease should take.

- What is your overall view on MRO leases?

- Is an MRO lease something you would consider requesting? Probe: Why/why not?
- What would be the benefits and drawbacks of MRO leases?
- What concerns would you have about requesting an MRO lease? Probe:
 - Why?
 - How could the Code address those concerns – what information or reassurance would you be looking for in the Code?

Exceptions

In some circumstances the Code may exempt pub owning companies from the obligation to offer a MRO lease if requested by the tenant.

- What exemptions, if any, should there be to pub owning companies' obligation to offer an MRO lease? Spontaneous
- How might a MRO lease affect you and your business? Spontaneous

A key exception may be after the pub owning company has made a significant investment in the pub.

- Tell me what you think about this in principle – does it seem fair to you that a MRO lease might not be appropriate after significant investment by the company? PROBE: Why/why not?
- How would you define a 'substantial investment'? Probe:
 - Certain types of work?
 - Above a certain value? If asked, explain that current thinking regarding 'substantial investment' is value of £35k and above or 1.5 times the annual rent
- What kind of investment or work would you consider not substantial i.e. that shouldn't exclude a tenant from requesting a MRO lease? Probe:
 - Why/why not?
 - What about routine maintenance? Probe for differing views on different types of maintenance
 - How would you define routine maintenance?
- Following a substantial investment, how long do you think a pub tenant should be excluded from requesting a MRO lease? Spontaneous then probe:
 - Does 5 years sound reasonable? Why/why not?
- What are the tenants' thoughts on MRO being exempted for uninvested sites, at the start of tenancies?
- Should very short tenancies be exempted from the requirement to offer a MRO lease on request? Probe:
 - Why/why not?
 - What minimum tenancy length would seem reasonable? Why?
- Should tenants be prevented from requesting a MRO lease for a period after making a request? Probe:
 - Why/why not?
 - If so, what might the time period be?
- Imagine you wanted to request a MRO lease. What information would you want to be provided to you before making any decision? Probe:

- What else?
- What information is most important? What is less so?
- Note: if time is short this is lower priority. What would you see as unreasonable terms for a MRO lease? Probe: For example:
 - Onerous stocking requirements Probe for examples: What kind of stocking requirements would put you off?
 - Very long leases, or short term leases? Probe: What would the minimum acceptable length of lease be for you? What about the maximum acceptable length?
 - Onerous payment terms? Probe for examples (possibly large deposits, quick turnaround to deal with dilapidations)
- What do you think the Code should specify as a timescale or time limit for negotiating a MRO, either to reach an agreement or if no agreement reached to refer to the new Adjudicator and rent assessor? Spontaneous then probe:
 - Does 3 months sound like a reasonable timescale? Why/why not?

Guest beer agreements (20 mins)

The Code will require pub owning companies to allow pubs to stock at least one guest beer of the tenant's choosing. Share slide below

Guest beer agreements

The Code will require pub-owning companies to allow tenants to enter into a guest beer agreement, whereby the tenant can sell at least one guest beer of their choosing regardless of the producer. The tenant will be able to change the chosen beer as often as they wish without incurring any penalties. Some conditions and parameters might be applied to this as part of the legislation

- What are your general views on this?
- Are you able to stock guest beers of your choosing at the moment? Probe:
 - Is it something you do?
 - How does the arrangement work?
 - How is it governed?
 - What works well/not so well about current arrangement?
- How important is it to you that this provision is in the Code?
- What information about this provision do you think should be in the Code?
- What type of guest beer would you likely select? Probe:
 - What factors influence your decision?
 - Would you have a preference for a local beer from a smaller brewery? Why/why not?
 - Should guest beer be focused on beers from smaller or local breweries?
- Would it be important for you to source guest beer directly from suppliers rather than from your pub-owning company?
- What benefits/drawbacks can you see of guest beer agreements?
- Are there any practical issues that would need to be considered?
 - Probe with respondents based on islands: What particular practical issues may affect you due to being based on an island?
- How do you think this might affect your rent? Probe: Why?

- Would this also impact on Flow Monitoring Equipment?

Arbitration (15 mins)

Note: if time is short, this section is lower priority

Under the new Code, there will be an arbitration process for dealing with disputes between tenants and pub owning companies. Share slide below

Arbitration

Under the new Code, there will be an arbitration process for dealing with disputes between tenants and pub owning companies. The Scottish Pubs Code Adjudicator will act as arbitrator. A dispute can be brought by either the tenant or the pub owning company. Prior to approaching the Adjudicator regarding the dispute, the tenant must first have notified the pub owning company of the alleged failure to follow the Code. Using

- Would you consider using such an arbitration process?
- What concerns might you have about it? Probe: Why?
- Have you been in a situation in the past where arbitration might have helped?
- Does your pub company already have a dispute resolution procedure?
 - If so, do you have views on how effective this is?
- What kind of disputes do you think might be best resolved by moving to arbitration?
- Are there any limits on arbitration i.e. any situations/types of dispute where it might not be suitable?
- Has everyone heard about the Pub Independent Conciliation and Arbitration Service? Probe:
 - What are your views on it – strengths/weaknesses?
 - Have you used it before – what happened?

Thinking about how the Arbitration process might be set out in the Code:

- What would you need to know about the process before using it?
- What would reassure you and increase your trust in arbitration?
- What obligations would you expect to be placed on:
 - The pub-owning company?
 - The Adjudicator?

Scope of the new Scottish Pub Code (15 mins)

Hopefully you had a chance to read through the Scottish Beer & Pub Association's voluntary Code of Practice before the workshop. Let's use this as a starting point for thinking about what the new Scottish Pub Code could cover. Bear in mind that the voluntary Code is regarded as covering the minimum requirements governing the operation of tied pubs in Scotland, so as we discuss this please also think about what you think the voluntary Code doesn't cover or equally anything that isn't necessary.

Also please be aware that the wider content of the new Code is something for Ministers to agree – it could end up being very limited or quite wide ranging.

- Before agreeing to take part in the workshop, were you aware of the Scottish Beer & Pub Association's voluntary Code of Practice? Probe if yes:
 - What do you think of it overall? Probe on strengths and weaknesses
 - Is the company that owns your pub a signatory to the Code, or do they explicitly follow it?
 - Have you used the voluntary Code or had recourse to it before? Probe: What for?
 - If used before – how helpful did you find it and why?
- Tell me how comprehensive you feel the voluntary Code is.

This is a summary of the things covered by the voluntary Code of Practice. Hopefully you had a chance to have a look at this prior to the workshop.

- Overall, what should the Code cover? Spontaneous then share slide below for reference and probe:
 - Role of Business Development Managers
 - Rent assessments
 - Rent reviews
 - Agreement renewal
 - Interaction with landlord
 - Amusement machines – supply and operation
 - Use of flow monitoring equipment
 - Complaints procedure
 - Surrender/end of tenancy

What should the new Scottish Pubs Code cover?

The current voluntary Code of Practice in Scotland covers the following:

Letting of premises

Role of Business Development Managers

Rent assessments

Rent reviews

Agreement renewal

Interaction with landlord

Amusement machines – supply and operation

Use of flow monitoring equipment

Complaints procedure

Surrender/end of tenancy

What should the new Scottish Pubs Code cover?

Let's look at these in more detail. Share summary slides for any topics raised by tenants on screen for reference and aid to discussion – stress these are not meant to be comprehensive. Skip over topics not mentioned. For each discussed, probe on what the obligations on the pub-owning company should be.

Possible impact of the Code on your business (10 mins)

- What impact could a future code have on your business and customers?
- What impact might it have on your relationship with the pub owning company?
- Do you think it might have a greater impact on certain types of tenants? Why?
Probe for impacts based on:
 - Rural/island areas
 - Age
 - Sex
 - Ethnicity
 - Disability
 - Socio-economic groups
- Tell me what impacts you think the Code might have on:
 - Your customers
 - Your local community

Wrap up (5 mins)

- Thinking back over the discussion, what two or three things would you like to feed back to the Scottish Government about the Code and its development?
- What aspects of your relationship with the pub-owning company are you most keen to see covered in the Code?
- In what ways should it differ from or improve upon the existing voluntary Code?
- Any other thoughts?

Thank and close

Appendix B: Pre-workshop task

Background information

In April 2021, the Tied Pubs Bill was passed into law as the [Tied Pubs \(Scotland\) Act](#). The Act requires the Scottish Government to create a **Scottish Pubs Code** that will regulate the relationship between tenants and their landlords. The Code will be enforced through a new, independent Scottish Pubs Code Adjudicator who will be appointed by Scottish Ministers. The Adjudicator will have the following key purposes:

- a) Investigating compliance of pub-owning companies with the Code
- b) Monitoring whether the pub-owning company is complying with a direction from the Adjudicator
- c) Overseeing the offer of Market Rent Only leases to tenants

The Adjudicator will have various powers to enable it to carry out its functions and will have the power to impose fines.

The new Scottish Pubs Code will draw on aspects from the existing Scottish voluntary code of practice and the tied pubs code from England and Wales (which is set out in legislation). However, the Scottish Government is also very keen to hear the views of tied pub tenants on the proposed Code and what they think it should cover. That's why the Scottish Government has asked Progressive to conduct a workshop with tied pub tenants from around Scotland.

Proposals for the Scottish Pubs Code

What should the Scottish Pubs Code cover?

Before the workshop, please look at the existing voluntary code for Scotland and think about what the new Code should cover:

<http://www.thepubgoverningbody.co.uk/wp-content/uploads/2016/07/Code-of-Practice-Scotland.pdf>

Think about which elements of this code are most important and why, and should be included in the new Scottish Pubs Code. Also think about what else could be included that is not covered here. Below is a summary of some of the key things covered by the current voluntary Code in Scotland:

Letting of premises

Minimum requirements for company information e.g.

- Summary of general terms of agreement
- Treatment of cask conditioned beer
- Tenancy checklist
- Full description of premises including any restrictions on use

Business support and development

Business Development Manager:

- Appointment and role of Business Development Manager
- Requirements for Business Development Managers e.g. training and experience

Business support:

- Pub owning company to set out how relationship with tenant will work
- Pub owning company to provide information on range of support and advice available through them
- Pub owning company to set out policy on requests from tenant for help arising from circumstances outwith their control that have adversely affected business

Rent assessments, reviews and renewals

Rent assessments

- Obligations on tenants e.g. seeking advice from trade valuation advisor before accepting proposed rent
- Documenting alterations/changes carried out at tenant's own expense
- Rent Assessment Statements
- Making tenants aware of the basis of the rent assessment and how it's calculated
- Undertaking the rent assessment

Rent review and renewals

- Provision of relevant information and timetables by company
- Requesting a rent review

Complaints procedures

- Escalation of complaints within the company
- Company responsibilities around explaining procedures
- How the complaint should be made, dealt with and if necessary escalated
- Timeframes for addressing and resolving complaints

End of tenancy

- Obligations around purchase of fixtures and fittings at end of tenancy
- How companies will deal with requests for surrender outside agreed notice periods

Requirement to give information to tenants

The Code will require pub-owning companies to provide certain types of information to tenants. The Act gives as an example information on rent assessments. The Code will set out how information should be provided, its content and format.

Questions to consider:

- If the company that owns your pub was to carry out a rent assessment, what information would you want them to provide about the assessment?

- How should that information be presented?
- What other information do you think the Code should oblige the pub-owning company to provide you with? Having a look at the voluntary code may help you think about this.

Market Rent Only (MRO) leases

The Code will require the pub-owning company to offer the tenant a MRO lease if they request it, subject to certain exceptions. The MRO lease offer must comply with the following:

- a) The tenant will only pay the market rent for the lease, to be determined jointly between the tenant and pub-owning company (if they cannot agree, the Adjudicator can appoint an Independent Rent Assessor to decide the rent)
- b) There will be no product or service ties included in the lease other than insurance - so for example no requirement to sell specific beers or other alcoholic drinks
- c) The legislation assumes the MRO offer should usually be made by varying the terms of the existing tenancy agreement rather than a completely new lease, and it should be varied only enough to make it an MRO lease. Your views are also welcome on this.

The Code may also specify a time limit on how long the negotiation of a MRO lease should take.

Questions to consider:

It may be that pub-owning companies are excepted from the requirement to offer a MRO lease if there has been recent substantial investment in the pub.

- What do you think about this in principle – does it seem fair to you or not?
- What would be the benefits and drawbacks of MRO leases?
- What kind of things do you think would be classed as ‘substantial investment’?
- What information do you think you should be provided with as a tenant if you were thinking about applying for a MRO lease?
- How long following an investment do you think the tenant should be prevented from being granted an MRO lease?

Guest beer agreements

The Code will require pub-owning companies to allow tenants to enter into a guest beer agreement, whereby the tenant can sell at least one guest beer of their choice. The tenant will be able to change the chosen beer as often as they wish without incurring any penalties.

Questions to consider:

- What are your general views on this?
- How important is it to you that this provision is in the Code?
- What information about this provision do you think should be in the Code?

- Should guest beer be focused on beers from smaller or local breweries to improve consumer choice?



© Crown copyright 2021

You may re-use this information (excluding logos and images) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or e-mail: psi@nationalarchives.gsi.gov.uk. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

The views expressed in this report are those of the researcher and do not necessarily represent those of the Scottish Government or Scottish Ministers.

This document is also available from our website at www.gov.scot.
ISBN: 978-1-80201-500-3

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

Produced for
the Scottish Government
by APS Group Scotland
PPDAS00000 (11/21)
Published by
the Scottish Government,
November 2021



Social Research series
ISSN 2045-6964
ISBN 978-1-80201-500-3

Web Publication
www.gov.scot/socialresearch

PPDAS949026 (11/21)