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**CAMPAIGN
FOR
REAL ALE**

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31st July 2017

CAMRA Response to the Tied Pubs (Code and Adjudicator) (Scotland) Bill Consultation

Thank you for the opportunity to respond to this consultation. Our submission is attached.

Many pubs in Scotland are struggling because pub companies are taking more than is fair or sustainable from tied licensees' profits. Licensees are being forced to buy the beer they sell from the company they are tied to rather than on the open market. This means that licensees can pay over 50% more for beer than they would on the open market. This is compounded by the fact that they are often paying above market value for rents. As a result, many licensees are struggling to make a living, contributing to the rate of pub closures in Scotland, which currently stands at one per week.

CAMRA have long campaigned for greater regulation of the relationship between pub companies and their tied tenants. In July 2016, we welcomed the implementation of a Pubs Code and Adjudicator in England and Wales. We believe that equivalent legislation now needs to be implemented in Scotland.

We would like to see the introduction of a Statutory Pubs Code and an Adjudicator for all tied pubs in Scotland. In addition, we would like to see a Market Rent Only option and Guest Beer Rights for tenants who are tied to pub companies that own 100 pubs or more in Scotland.

Please do not hesitate to contact me if you wish to discuss any of the issues raised further.

Yours sincerely,

Colin Valentine
CAMRA National Chairman

Sarah Bellis
Regional Director for Scotland

If you would like to speak to anyone at CAMRA about issues discussed in our response please contact the Campaigns Team on campaigns@camra.org.uk or call 01727 337 851.

Tied Pubs (Code and Adjudicator) (Scotland) Bill Consultation

Response from CAMRA, the Campaign for Real Ale

July 2017



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Tied Pubs (Code and Adjudicator) (Scotland) Bill Consultation

Tied Pubs (Code and Adjudicator) (Scotland) Bill Consultation Response

QUESTIONS

SECTION 1 - ABOUT YOU

1. Are you responding as:

- ☐ an individual – in which case go to Q2A
- ☒ on behalf of an organisation? – in which case go to Q2B

2A. Which of the following best describes you? (If you are a professional or academic whose experience or expertise is not relevant to the proposal, please choose “Member of the public”)

- ☐ Politician (MSP/MP/Peer/MEP/Councillor)
- ☐ Professional with experience in a relevant subject
- ☐ Academic with expertise in a relevant subject
- ☐ Member of the public

2B. Please select the category which best describes your organisation:

- ☐ Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)
- ☐ Commercial organisation (company, business)
- ☐ Representative organisation (trade union, professional association)
- ☒ Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
- ☐ Other (e.g. club, local group, group of individuals, etc.)

3. Please choose one of the following; if you choose the first option, please provide your name or the name of your organisation as you wish it to be published.

- ☒ I am content for this response to be attributed to me or my organisation
- ☐ I would like this response to be anonymous (the response may be published, but no name)
- ☐ I would like this response to be confidential (no part of the response to be published)

Name/organisation:

CAMRA, the Campaign for Real Ale

CAMRA is a UK consumer group with over 5,000 members in Scotland that acts as the independent voice for real ale drinkers and pub goers. Our vision is to have quality real ale and thriving pubs in every community.

4. Please provide details of a way in which we can contact you if there are queries regarding your response. (Email is preferred but you



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can also provide a postal address or phone number. We will not publish these details.)

Contact details:

Ellen Hudspith, Policy & Research Officer - ellen.hudspith@camra.org.uk

SECTION 2 - YOUR VIEWS ON THE PROPOSAL

Aim and approach

1. Which of the following best expresses your view of establishing a statutory Scottish Pubs Code and Scottish Pubs Code Adjudicator?

- ☒ Fully supportive
- ☐ Partially supportive
- ☐ Neutral (neither support nor oppose)
- ☐ Partially opposed
- ☐ Fully opposed
- ☐ Unsure

Please explain the reasons for your response.

CAMRA is fully supportive of the introduction of a statutory Pubs Code and Adjudicator for tied pubs in Scotland.

Large pub companies in Scotland have been taking more than is fair or sustainable from pub profits by requiring licensees to buy their beer from them rather than on the open market, and at inflated above-market prices. An accepted principle of a tied pub agreement is that a licensee will pay a higher price for beer than on the open market, but will also receive business support and a lower rent from their pub company.

However, a 2014 study commissioned by CAMRA about the tied pub sector in Scotland found that 96.5% of tied respondents believed that paying a reduced rent did not fully take in account the higher prices they paid for their tied products, and 74% of respondents felt that they were worse off due to their tied contract. The results of the study can be found at Appendix 1.

The current tied system in Scotland is unregulated by legislation and is creating an imbalance of power as pub companies develop a monopoly over the supply and cost of tied products, leaving licensees paying increasingly high prices for a restricted range of stock.

This is having a significant economic impact upon tied tenants and the viability of tied pubs in Scotland. The same 2014 study found that 54% of respondents stated their take home annual earnings as between £10,001 and £15,000, and 10.5% of respondents earned under £10,000.

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This shows the importance of the proposed Pubs Code to the Scottish tied pub sector, as currently licensees are being denied a fair living, and are also unable to invest in their businesses, stimulate the local economy and create jobs through expansion. Improvements in the quality of the tied pubs sector will also lead to more variety and choice for consumers.

We also draw your attention to the petition at Appendix 2, collected at Paisley Beer Festival, showing public support for the Members' Bill

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

- ☐ Yes (if so, you may wish to specify any possible alternative option(s))
- ☒ No
- ☐ Unsure

Please explain the reasons for your response.

It is CAMRA's view that the only effective way to regulate the relationship between pub companies and their tenants is through legislative reform as industry self-regulation has been ineffective.

A Pubs Code and Adjudicator were enshrined in law in England and Wales through the Small Business Enterprise and Employment Act 2015; this followed a Select Committee inquiry which found that industry self-regulation had been a failure, despite ten years and six versions of the voluntary Code being produced. The current system of self-regulation in Scotland is run by the Scottish equivalent of the industry group that governed the failed voluntary Code in England and Wales.

While the Scottish Beer and Pub Association relaunched their voluntary Industry Code in July 2016, with six of the larger pub companies signed up to it, the Code is very similar to those used when industry self-regulation was unsuccessfully attempted in England and Wales.

The Scottish Beer and Pub Association represents pub companies and brewers, but not tenants of pub companies. It is CAMRA's understanding that no referrals have been made by tenants under the original voluntary Scottish Code. Our contention is that this is because tenants with valid concerns either have no awareness of the self-regulatory system or little confidence in it.

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

The introduction of a Statutory Code and Adjudicator is vital to delivering in law the principle of fair and lawful dealing between Scottish pub companies and their tied tenants. This will help ensure that tied tenants in Scotland are no worse off than those who are free of tie, and that they are treated lawfully. It will also bring legislation into line with that in England and Wales, where a Statutory Code and Adjudicator have been in force since July 2016.

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It is vital that tied tenants in Scotland are allowed formal access to redress in the event of unfair treatment by their pub company, and are able to obtain fair contractual terms for the supply of beer and rents in line with market values. Current industry self-regulation is failing in Scotland – we are unaware of any referrals being made by tenants under the voluntary Code currently in place in Scotland, showing a lack of appetite for redress that is governed by the pub companies to which the tenants belong.

The introduction of a statutory Code and Adjudicator will ultimately improve the Scottish pub sector for everyone. Tied tenants will be able to make a fair living and have more capacity to invest in their businesses. This in turn will improve the quality of pubs in Scotland and the choice they offer consumers, and will stimulate local economies.

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

CAMRA does not believe that there are any major disadvantages in the creation of a statutory Code and Adjudicator. Regulation will produce a fairer and higher quality pub sector for Scotland.

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

- ☒ Fully supportive
- ☐ Partially supportive
- ☐ Neutral (neither support nor oppose)
- ☐ Partially opposed
- ☐ Fully opposed
- ☐ Unsure

Please explain the reasons for your response.

CAMRA are fully supportive of the establishment of a Market Rent Only option for tied tenants as part of a Scottish Pubs Code.

A mandatory Market Rent Only option for licensees tied to large pub companies is the simplest way to allow market forces to work, and remove the current disadvantage to tied licensees compared with free of tie lessees. It is essential that rents offered alongside free of tie agreements are at a fair, open market rate to ensure that the principle that a tied licensee should be no worse off than a free-of-tie licensee is achieved.

Among the benefits of a Market Rent Only option would be that pub companies would be incentivised to act in a competitive manner and make their tied deals fair and attractive, as failure to do so would result in a high proportion of their tied licensees choosing to become free of tie. We would expect that, as pub companies improve their deals to compete better with new free of tie options, only a small minority of existing licensees would opt to go free of tie. As pub companies improve

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their tied offers to tenants, consumers could expect to see better product ranges in pubs, for example more locally brewed beers.

The provision of a Market Rent Only option will allow licensees substantially to increase their profits, and enable them to reinvest money in their businesses, boosting the quality of pubs in Scotland and the local economy. This will apply both to licensees who take a Market Rent Only option and to those tied tenants who see the terms of their tied contracts improved as pub companies are incentivised to offer more attractive tied deals.

A Market Rent Only option will also help improve consumer choice, and benefit smaller brewers who will be offered more routes to market as tied licensees taking that option will no longer have stocking requirements imposed on them and will instead be able to purchase beer at market cost. This will increase the variety of beer on offer to consumers, and allow licensees to stock locally produced, high quality real ales.

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

We welcome the two core principles at the heart of the proposed Bill: fair and lawful dealing, and that a tied tenant should be no worse off than a free of tie tenant. These are vital for statutory regulation to be effective and produce a fairer pub sector for Scotland.

CAMRA supports the proposed content of the Bill and Code, and particularly the inclusion of the Market Rent Only option, the delivery of which will be a key function that ensures that tied licenses are no worse off than those who are free of tie.

It is vital that the Adjudicator is given a suitable level of power to act as a true deterrent to pub companies against breaking the Code.

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

- ☒ Fully supportive
- ☐ Partially supportive
- ☐ Neutral (neither support nor oppose)
- ☐ Partially opposed
- ☐ Fully opposed
- ☐ Unsure

Please explain the reasons for your response.

In order to provide a true deterrent to pub companies found to be in breach of the Code, the Adjudicator must be able to impose financial penalties for breaches. This is in line with the Adjudicator for England and Wales, who has the power to impose fines of up to 1% of the turnover of the pub companies concerned.

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A power to impose financial penalties is the only way to ensure that the Adjudicator has the necessary influence within the industry to deter breaches in the first place, and prevent repeated breaches for the same reasons at a later time.

It is also worth noting that while the Adjudicator should have this power, it does not preclude the Adjudicator choosing to take alternative enforcement action, such as imposing a smaller fine than the maximum or asking a pub company to provide undertakings as to future conduct in lieu of a financial penalty, in which case if the undertakings are not fulfilled then the financial penalty can be levied promptly.

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

- a) The Scottish Pubs Code – including the Market Rent Only option – should apply to all tied pubs in Scotland
- b) The Scottish Pubs Code should apply to all tied pubs in Scotland, but the Market Rent Only option should only apply to tenants of larger pubcos
- c) The Scottish Pubs Code should apply only to larger pubcos and the Market Rent Only option should only apply to tenants of those larger pubcos.

Please explain the reasons for your response.

CAMRA's preferential approach would be Option b).

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

CAMRA believes that a large pub company should be defined as one owning 100 pubs or more in Scotland.

Financial implications

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

a. The pub companies which own tied pubs (Pubcos)

- ☐ Significant increase in cost
- ☒ Some increase in cost
- ☐ Broadly cost-neutral
- ☐ Some reduction in cost
- ☐ Significant reduction in cost
- ☐ Unsure

Please explain the reasons for your response

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CAMRA is proposing that the Adjudicator should be funded by those that the Pubs Code seeks to regulate – namely pub owning companies operating in Scotland. Therefore it is acceptable, as with the Pubs Code Adjudicator for England and Wales, for a levy to be imposed on pub owning companies to which the Code applies, to pay for the Adjudicator and their office to function.

As the number of tied pubs in Scotland is lower than that in England and Wales, the levy charges may not need to be as high in Scotland. As acknowledged in the consultation document, the Adjudicator position may only need to be a part-time position, which will bring any cost burden down for pub owning companies paying a levy.

There will also be an increased administrative cost from a requirement for a regular rent review, and completing necessary paperwork and rent assessments in the event of the MRO option being triggered. However, these features of the proposed Code are so vital to delivering the Code's aims that this small cost is justified for pub companies to bear.

b. Tied-pub tenants

- ☐ Significant increase in cost
- ☐ Some increase in cost
- ☐ Broadly cost-neutral
- ☐ Some reduction in cost
- ☒ Significant reduction in cost
- ☐ Unsure

Please explain the reasons for your response

The implementation of a Scottish Pubs Code and Adjudicator could result in significant savings for tied pub tenants. Through the provision of the MRO Option, tenants could reduce the costs of drinks, food and services considerably as they will be able to purchase them on the open market. The Code will also incentivise better quality tied deals for tenants, through which they can secure lower rents, delivering financial savings.

CAMRA is advocating the introduction of Guest Beer (real ale) Rights for tied tenants, which will result in them being able to make savings on the cost of goods. Furthermore, through the provision of a regular and fair rent assessment, tied tenants who have been paying above what is fair in rent may see reductions in rent under their existing tied agreements, delivering financial savings which will boost take home income and the ability to invest in and improve their businesses – which will see benefits both for consumers and for the wider local economy.

c. Tied-pub customers

- ☐ Significant increase in cost
- ☐ Some increase in cost
- ☐ Broadly cost-neutral

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- ☒ Some reduction in cost
- ☐ Significant reduction in cost
- ☐ Unsure

Please explain the reasons for your response

Owing to decreased rent and goods costs for tied tenants under a Code and with caps on increases in tied goods and services and provision of the MRO Option, tied tenants may be able to pass on some of their cost savings to consumers.

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

As with the Pubs Code Adjudicator for England and Wales, the establishment and running costs of the Adjudicator's office should be paid for through a levy on the pub owning companies which the Scottish Code and Adjudicator would govern.

This is an entirely proportionate measure, which provides financial motivation for pub owning companies to avoid breaching the Code and so incurring financial penalties from the Adjudicator (which CAMRA is proposing that the Adjudicator should have the power to impose).

As the tied pub sector in Scotland is smaller than that of England and Wales, it would be appropriate to have a smaller levy than in England, as the office of the Adjudicator would not need to be as large, owing to a lower arbitration workload.

Equalities

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

- ☐ Positive
- ☐ Slightly positive
- ☒ Neutral (neither positive nor negative)
- ☐ Slightly negative
- ☐ Negative
- ☐ Unsure

Please explain the reasons for your response.

The proposed Bill will have no overall impact on equality as defined under the Equality Act 2010.

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

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No measures will be needed as no negative impact on equality will be caused by the Bill.

Sustainability of the proposal

14. Do you consider that the proposed bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

☒ Yes

☐ No

☐ Unsure

Please explain the reasons for your response

The proposed Bill will have mainly economic impacts as it is concerned with regulation of the tied pub sector in Scotland.

Following the implementation of the Pubs Code in England and Wales, pub companies affected by the Code have published the following in their annual reports:

- Ei Group plc: *“Although we experienced a short-term slowdown in letting activity upon implementation of the Pubs Code, due to the need to re-market all lets in line with the new regulatory requirements, we do not expect this to impact our expectations for the current year financial performance.”*
- Punch Taverns plc: *“We will incur additional cost in the short term to meet these challenges and we have already strengthened our senior management team, our Retail division team and our Regulatory Compliance function. In the medium term we plan to offset these costs through efficiency savings. The Pubs Code Regulations are negatively impacting letting activity in the first half of the new financial year as we have had to re-market all lets in line with the new regulatory requirements. While this is impacting near-term trading, our expectations for the longer-term growth prospects of the business remain unchanged.”*
- Greene King: *“Now that the revised Code has been announced, and assuming there are no further changes, we can start to plan for its introduction at the end of July 2016. We believe that the overall financial impact on the group will be immaterial.”*

This suggests that pub companies in England do not expect to experience any long term effects, and that short term effects were related to re-advertisement of lettings in line with the new Regulations. On the assumption of a similar Code structure and content, as proposed in the consultation document, this suggests that the Code can be delivered without disproportionate economic impacts in Scotland.

General

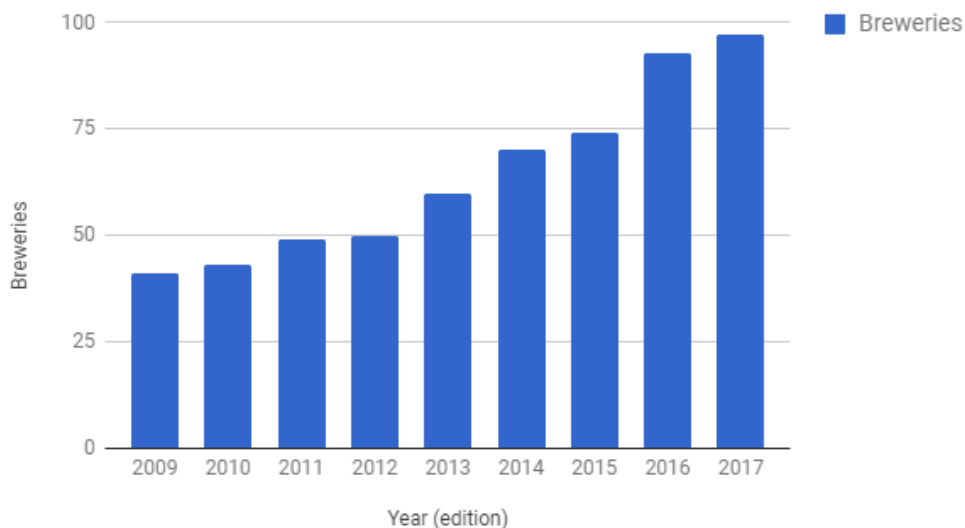
15. Do you have any other comments or suggestions on the proposal?

Guest Beer Rights

In addition to a Market Rent Only option for tenants of pub companies owning 100 or more pubs in Scotland, CAMRA would also like to see the introduction of Guest Beer Rights (real ale) for the tenants of the same pub companies.

The brewing industry in Scotland has grown rapidly over recent years. This is evidenced through the graph below, which shows the number of breweries included in the CAMRA Good Beer Guide since 2009.

Number of Scottish breweries in the Good Beer Guide



As a result of this growth there is now a wealth of smaller brewers producing high price point, high quality cask beer. However they are struggling to gain access to market in tied pubs, owing to the beer tie and to the imposition by pub companies on tied tenants of a set stock list. The beer tie is resulting in restricted consumer choice, as smaller brewers cannot gain access to the tied pub sector. Small brewers struggle to gain access to the tied pub market as they are unable to supply the minimum volumes, discounts and logistics demanded by large wholesale and pub owning companies.

Therefore, CAMRA is advocating the inclusion of Guest Beer Rights in a Scottish Pub Code, as this would allow tied tenants to stock a cask-conditioned guest beer of their choosing, rather than being restricted by the range and prices of the stocking lists of their pub companies. CAMRA consider it fair for this provision to apply only to those companies owning 100 or more tied pubs in Scotland.

Scottish Tied Pub Licensee Survey: Methodology & Key Findings Overview

**Report produced by CGA Strategy for
CAMRA**

September 2014



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Methodological & Statistical Validity Statements

Key Results Review

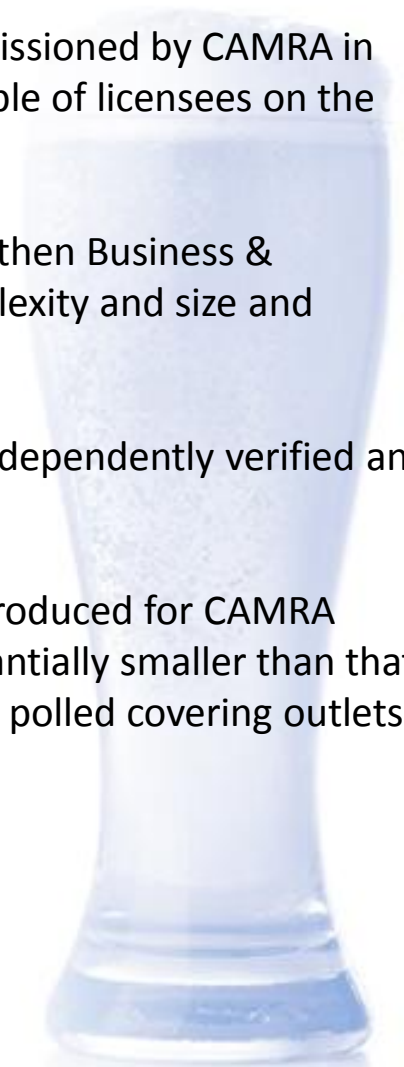


CAMRA Scottish Pub Tie Survey

History/ Context



- As an independent on trade research consultancy, CGA Strategy was commissioned by CAMRA in 2011 and 2013 to produce a telephone survey to a randomly selected sample of licensees on the subject of the effects of the pub tie
- The project concept and methodology was based upon CGA's work for the then Business & Enterprise Select Committee (BEC) survey of 2009 reduced slightly in complexity and size and additionally covering freehold and free of tie outlets
- The remit and project scope provided to CGA by CAMRA was to offer an independently verified and statistically valid view of current licensee sentiment toward the pub tie
- The survey undertaken in August of 2014 used elements of the structure produced for CAMRA previously focusing purely on the Scottish Tied Pub Sector – which is substantially smaller than that in England & Wales. As a result a headline sample base of 200 outlets were polled covering outlets from across the Scottish TV Region



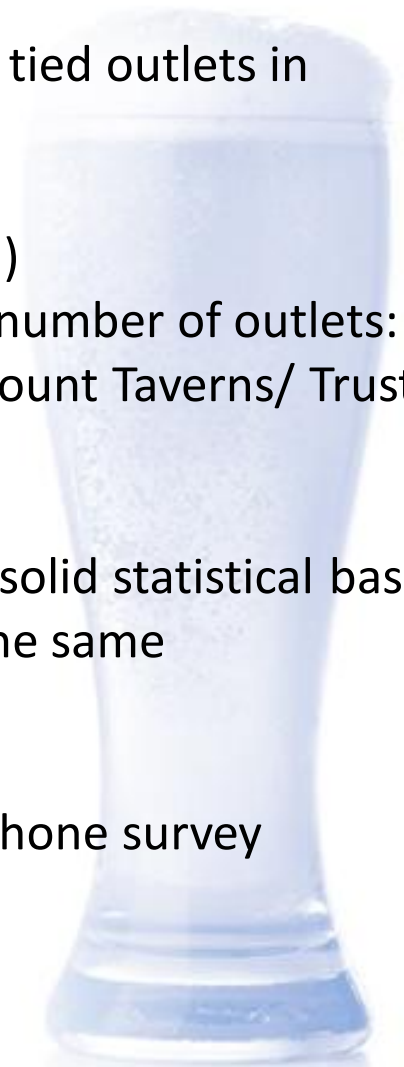
Methodology statement

- A random total sample of 200 leased/ tenanted pub outlets was used – due to the relatively small size of the tied sector in Scotland this provided c. 20% of the total giving a statistically well substantiated number which lies well within a robust error rate of +/- 3%
- The turnover and income/profit questions were based on licensee declarations split into a number of standardised bands – again using wording and option frameworks as agreed with BEC and repeated in the 2011 & 2013 CAMRA projects
- Overall, the survey undertaken for CAMRA in August 2014 follows a standard set of criteria as used by CGA in multiple projects in recent years



Statistical Validity Considerations

- CGA were able to poll a valid and representative number of tied outlets in Scotland across all types and companies:
 - Total Number of Scottish Pubs: 4,663
 - Total Number of Scottish Tied Pubs: 1,028 (22% of total)
 - Top 5 Breakdown of Tied Pubs by Operator/ Pub Co by number of outlets:
Punch/ Star Pubs & Bars/ Iona Pub Partnership/ Rosemount Taverns/ Trust Inns
- Based on the number of results, CGA was able to provide a solid statistical base in line with the methodologies used by BEC and following the same requirements as the CAMRA commission in 2011 & 2013
- The findings are robust as output from a standardised telephone survey



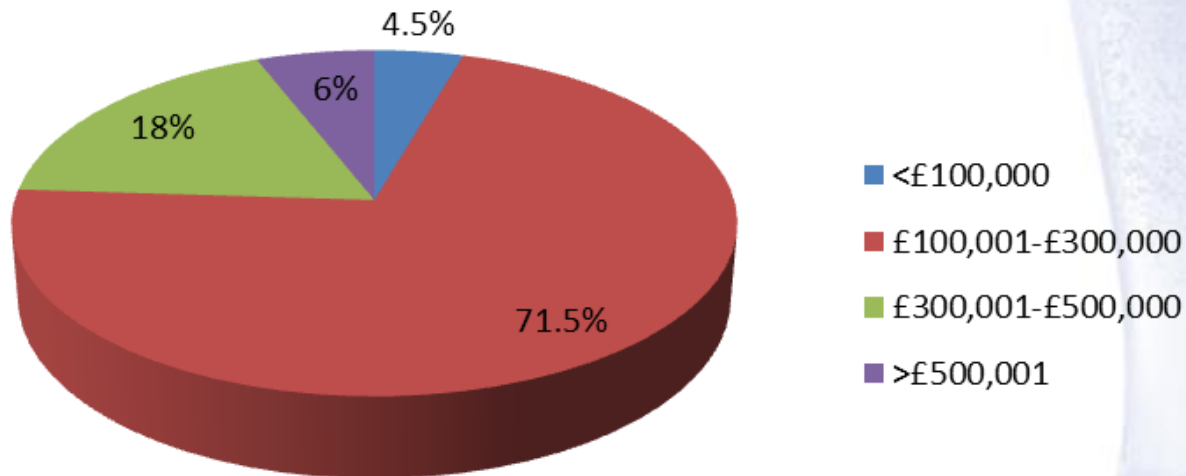
CAMRA Scottish Pub Tie Survey – August 2014

Key Results Findings



Annual Turnover

- Results were based on the following number of individual licensee responses:
 - Scottish Tied Pub: 200
 - Private/ Confidential Responses: 37 (18.5%)
- Proportionally the number of non confidential respondents with a turnover of between £100k-£300k was the largest with 71.5%, only 4.5% had a turnover less than £100k

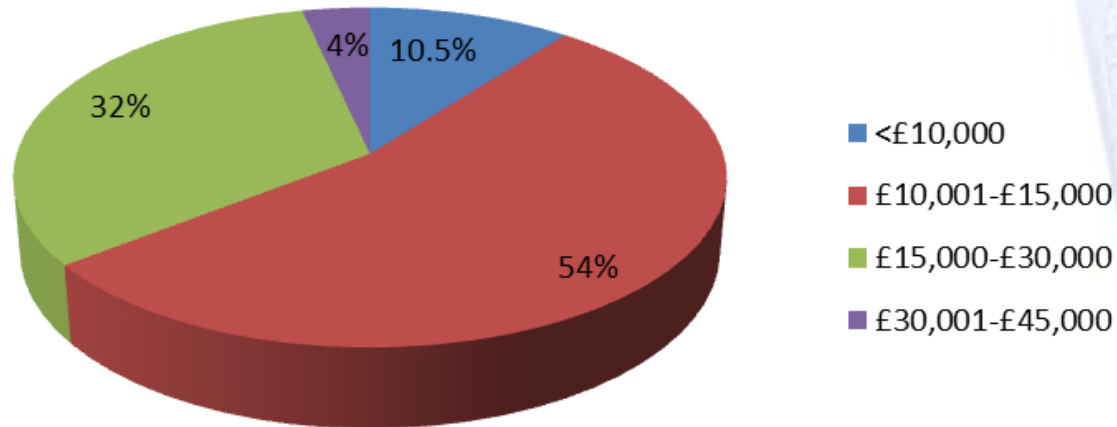


*Chart Based on 163 non confidential responses



Personal Earnings/ Income

- Results were based on the following number of individual licensee responses:
 - Scottish Tied Pub: 200
 - Private/ Confidential Responses: 37 (18.5%)
- Almost two thirds (64.5%) of non confidential respondents earn/ have an income of less than £15k, of these 10.5% earn less than £10,000 per annum

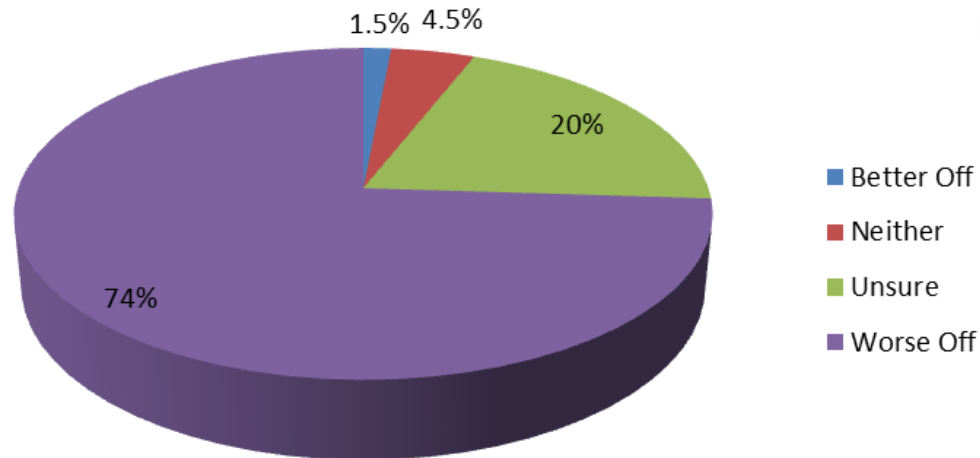


*Chart Based on 163 non confidential responses



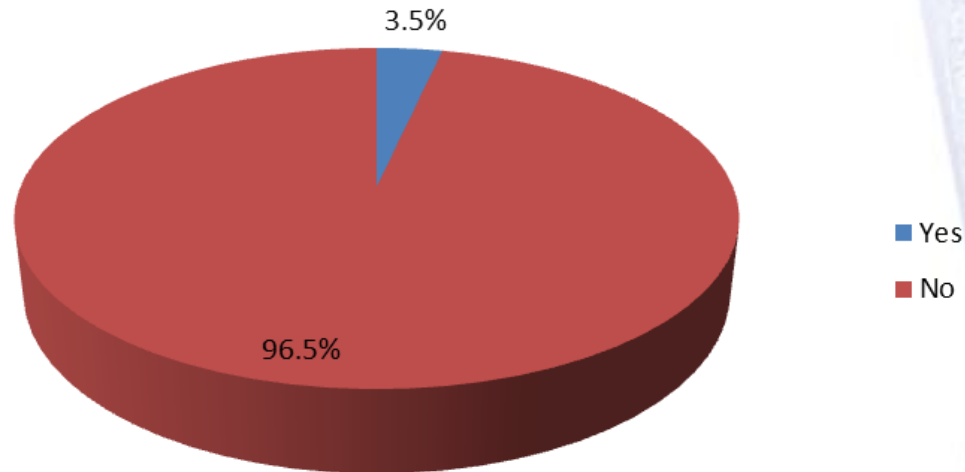
Financial Sentiment: Better/ Worse Off

- Results were based on the following number of individual licensee responses:
 - Scottish Tied Pub: 200
 - Unsure Responses: 40 (20%)
- Almost three quarters (74%) of respondents considered themselves worse off as a result of their tie. Only 1.5% felt they were better off



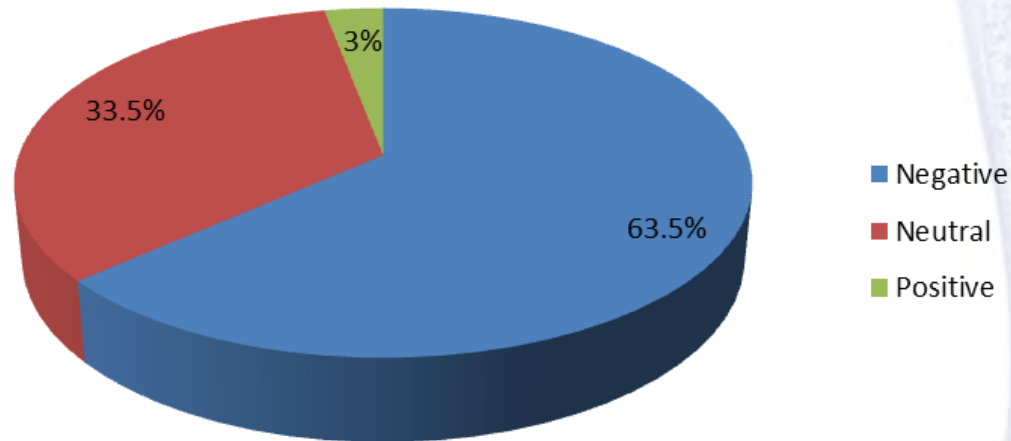
Financial Sentiment: Reduced Rent/ Higher Prices

- Results were based on the following number of individual licensee responses:
 - Scottish Tied Pub: 200
- 96.5% of all respondents believed that paying a reduced rent did not fully take into account the higher prices they paid for their tied products



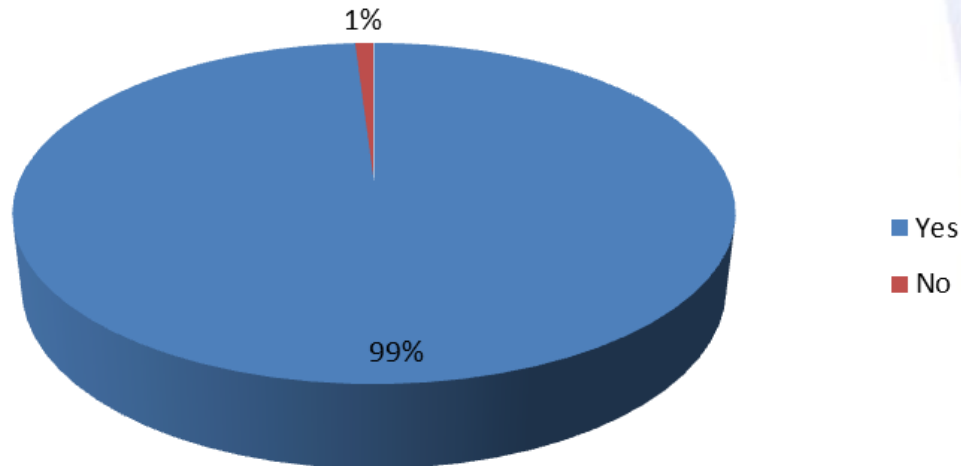
Beer Tie Agreement Sentiment

- Results were based on the following number of individual licensee responses:
 - Scottish Tied Pub: 200
- Only 3% of respondents had a positive sentiment for their beer tie agreement; although a third (33.5%) of replies were neutral



Required Scottish Government Action Sentiment

- Results were based on the following number of individual licensee responses:
 - Scottish Tied Pub: 200
- A resounding 99% of respondents felt that the Scottish Government should act to ensure the protections afforded to tied licensees in England & Wales also applied in Scotland



How to contact us...



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Tied Pubs (Code and Adjudicator)(Scotland) Bill

Tied pub reform in Scotland is long overdue. Protect our Pubs is the campaign for fairness for Scottish tied pub tenants, greater choice for consumers and the protection and creation of jobs in Scotland's pub and brewing industry.

I fully support Neil Bibby's proposed Members' Bill which would establish a Scottish Pubs Code and Adjudicator alongside a Market Rent Only option for tied pub tenants.

[illegible]



Tied pub reform in Scotland is long overdue. Protect our Pubs is the campaign for fairness for Scottish tied pub tenants, greater choice for consumers and the protection and creation of jobs in Scotland's pub and brewing industry.

[illegible]



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[illegible]



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I fully support Neil Bibby's proposed Members' Bill which would establish a Scottish Pubs Code and Adjudicator alongside a Market Rent Only option for tied pub tenants.

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Tied Pubs (Code and Adjudicator)(Scotland) Bill

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