

## Scottish Property Federation Response to Consultation on Tied Pubs (Code and Adjudicator) (Scotland) Bill

The Scottish Property Federation (SPF) welcomes the consultation on the proposals to legislate on a 'Scottish Pubs Code'. Our response to the consultation on the proposed Tied Pubs (Code and Adjudicator) (Scotland) Bill is below. We would be pleased to answer any further questions on our response should they arise.

The SPF is the voice for the property industry in Scotland and speaks for over 185 corporate members with interests in Scottish real estate. We include within our membership major institutional investors and funds, developers, real estate lenders, landlords of commercial and residential property, and professional property consultants and advisers.

### SECTION 1 - ABOUT YOU

**1. Are you responding as:**

On behalf of an organisation.

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

Other – Trade Association

**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

**Name/organisation:** Scottish Property Federation

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

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## SECTION 2 - YOUR VIEWS ON THE PROPOSAL

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

1. At this stage, the Scottish Property Federation is of the view that the proposed legislation on a 'Scottish Pubs Code' is unnecessary and could have negative consequences for the pub industry. Further, if this legislation is to go forward, we would argue that there is an urgent need for more Scottish based market research on the Bill's predicted impact on the pub industry, which is missing from the consultation document.

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

#### **Legal and professional advice**

2. The SPF is of the view that improving tenants' uptake of legal and professional advice before lease agreements are finalised would significantly benefit tenants and help achieve the aims of the proposal - without the need to legislate. At the moment, a significant number of prospective tenants of tied pubs do not obtain adequate legal or professional advice before entering into lease agreements. This could lead to the possibility of there being unexpected conditions for tenant further into their tenancy if they have not adequately understood or negotiated the terms of the lease. We hope that more tenants will seek advice in the future as experts can help to protect tenants on the financial side of the deal as well as the legal.

#### **Allowing the market to continue self-adjusting**

3. Since the 2008/09 financial crash, there has been a greater appreciation of the symbiotic relationship that exists between pub landlords and tenants. Landlords are doing more to work with their tenants to ensure that their business operates successfully, which in turn enhances the landlord's underlying asset value.
4. In addition, there has been a significant increase in availability of free-of-tie leases in the market and demand for these continues to outweigh the demand for tied leases.
5. Therefore, the current market trajectory is such that, without the costly and time intensive process of introducing a Bill to the Scottish Parliament, the aims of the proposal could soon be delivered. In recent years great strides have been taken to

ensure that leases are more competitive and fair to both parties – a process that our members support and expect to continue.

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

##### **Costs and impacts**

6. It has been reported that roughly 1.6% of the total number of tied units in England have had cases referred to the adjudicator. If the same percentage of tenants in Scotland were referred to the Scottish adjudicator then there would be roughly 15 cases every year. Given the consultation document advises that 12 pubs are likely to close as an ‘indirect’ consequence of the proposed legislation, the net benefit could be that relatively few businesses are better off – if any at all. When the risks and costs of the Bill are considered, the SPF believes that the negatives could very easily outweigh the potential benefits.
7. In addition, imposing the proposed restrictions on landlords could result in pub companies deciding that tied rents, and perhaps even letting properties as pubs, would come with too much financial and regulatory risk. This could result in landlords selling properties or moving out of the Scottish market all together, which would be detrimental to the numbers of pubs in Scottish communities. The proposal indicates that only 12 pubs might close as a result of this legislation (at a cost to business of £516K), but our members believe that the figures could be considerably higher. It is vital that there is a balance between protecting tenants and not discouraging potential landlords and the additional investment that they bring to pubs.

##### **Scotland’s comparison with England and Wales**

8. It should be noted that tied pubs in Scotland operate in an different legal system from England and Wales. As a result, situations that arise south of the border relating to leases are not necessarily applicable in Scotland. Throughout the consultation document there are many references to the English and Welsh Pubs Code, with little research based on the different circumstances in Scotland. While there may have been a requirement to legislate in the rest of the UK, comparisons with the Pubs Code used elsewhere could be unhelpful or lead to the wrong conclusion. Without more focused research into the possible impacts of the Bill in Scotland it is impossible to fully appreciate the effect of legislating in this area.

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

**Competition**

9. The legislation will have various implications for competition law and we would like to see more detail on how the Bill will adhere to these regulations in order to safeguard a free and fair market.
  
10. We would like to note that the proposal being consulted on was presented in a user-friendly way and our members generally found it to be well written and easily understandable.