Scottish Pubs Code for tied pubs consultation

Consultation Proposals

Market Rent Only leases

1. Market Rent Only (MRO) leases are provided for in Schedule 1 of the Act. This requires that the landlord must, in certain circumstances, offer a tenant a lease which does not include any product or service ties. The exceptions to the requirement to offer MRO leases are set out in Part 4 of the Scottish Pubs Code.

Circumstances where Market Rent Only leases might not be offered

Notice to end the lease

2. In the Scottish Pubs Code, there are a number of exemptions where pub-owning businesses are not required to offer MRO leases to tenants. These exemptions were included following earlier consultation on the content of the code.

3. One of the exemptions is that MRO need not be offered by a pub-owning business where either the tenant or the pub-owning business has served a valid notice to bring the lease to an end. It is recognised that both parties should have the right to end the contractual relationship.

4. There has been concern from some stakeholders that this exemption could lead to notices to quit being issued very early upon entering an agreement, allowing almost the whole lease length to be exempt from MRO. It has also been suggested that there are only specific circumstances when a notice to quit can be served by pub-owning businesses, i.e. in relation to substantial breaches of lease agreements, and so this is a function of the lease rather than an issue for the code.

5. The draft code contains protection for the tenant in the form of regulation 3:

"A pub-owning business must not subject a tied-pub tenant to any detriment as a consequence of the tenant exercising, or attempting to exercise, any right under this code."

6. We are proposing to amend this regulation to make it clearer that the MRO exemption only applies where a pub-owning business or tied pub tenant has not served a notice to bring the lease to an end before a specified period of time before the end date of the lease.

Question 1: Do you agree or disagree with the following statement: in the case of a notice to quit, MRO exemption only applies where a pub-owning business or tied pub tenant has not served a notice to bring the lease to an end before a specified period of time before the end date of the lease.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your answer.

This question is rather confusingly worded and hard to understand and therefore there is a real danger of it being misunderstood (and answers therefore mistakenly given).
Does 'before a specified period of time before the end date of the lease' refer to ending the lease or serving the notice. It could be either! We therefore feel that this particular question/part of the consultation should be re-run, with a much clearer question that all parties can understand and correctly respond to, especially with it being such a fundamental issue and a real danger to the Code not working.

The issue here is that pubcos will serve notice routinely to avoid MRO, so this must be prevented altogether with clear clauses – and oversight – to prevent this.

In England and Wales, the regulated pub companies have routinely served Section 25 notices claiming they want to take the pub 'back' and run it as a managed pub, when this has not really been the case and often they have then either forced the tenant to have a less favourable agreement (including being tied) or installed a 'self-employed' manager / franchisee (which by definition is not manging the pub themselves!) or installed a new tied tenant. This must not be permitted in Scotland, is it a clear abuse of power.

There must therefore be no exemption to the right to go MRO throughout the lease and notice to quit must not be permitted as a reason to prevent that, or it will be routinely abused by pub companies seeking to avoid their tenants exercising their legal right to go MRO.

Question 2: If a timeframe were to be specified, should that be:

A period of less than 3 months

3 months

A period of more than 3 months

Please explain your answer.

As above, we do not believe that there should be any exemption due to serving notice, or it will be abused and the Code and legislation will fail in its intent and principles.

First half of the lease: earlier application process

7. The sector previously proposed an exemption that an MRO lease need not be offered in the first half of the lease. This is included in the current code. This supports the third regulatory principle of a fair share of risk and reward, by providing pub-owning businesses with some confidence of return upon entering an agreement.

8. This exemption was proposed at a time when 5-year leases were common. We understand from tenants and pub-owning businesses that shorter leases are now being offered, for example for 3 years or less. If an MRO lease need not be offered in the first half of the lease, shorter leases mean that MRO will be an option for tenants for a shorter period of their lease than was originally envisaged.

9. Given the use of shorter leases and the fact that the MRO process could take a few months to complete, it is proposed that the process of MRO should start before the half-way point of any lease, to allow the process to get underway in good time. The new lease date could then start at the half-way point of any lease. MRO leases are not required to be longer than the remainder of the existing lease and so this would give any tenants who chose to go MRO more time to realise any benefits of going MRO.

10. Tenants can still choose to remain tied following any MRO process, once they have assessed the risks and rewards.

Question 3: Do you agree or disagree with the following statement: the Market Rent Only process should be able to start before the half-way point of a tenancy?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your answer

As the introductory information to this question makes clear, the pubcos are already engaged in Code and MRO avoidance by reducing the length of agreements. They will do anything they can to stop their tenants having the basic right to go free of tie on a fair rent and the whole need for legislation is to stop this kind of abuse of power – and ensure a fairer split of pub profits between the pubco and tenant.

The current Code terms of when to trigger is over complex at the moment and clearly open to abuse and must be changed.

For the right to go MRO to be meaningful, tenants must be able to operate on a free-of-tie basis for a reasonable/meaningful proportion of the lease/tenancy – for at least two years of any lease and at least half of any lease - and thus take a fair share of the pubs profits for their hard work (not the work of the pubco), which is what the Code is being introduced to ensure.

To do this, tenants must be allowed to be free-of-tie/MRO from one year into any lease/agreement (and potentially sooner if circumstances change and there is a justifiable case for the tenant to trigger it). The process needs to allowed to be triggered

in time for that to happen (see next answer about how long the process should take, which is key).

We also think that it is essential to ban any tied lease/tenancy under three years to stop the kind of code avoidance behaviour already happening. Otherwise pub-owning companies will simply shorten agreements to deny their tenants having the legal right to go MRO. This must not be allowed to happen, or the Scottish Government will be establishing a system that will fail to achieve its principles or objectives.

Question 4: If the Market Rent Only process were to start before the half-way point of a tenancy, how soon should it start?

Less than 6 months before the half way point of the tenancy

6 months before the half way point of the tenancy

More than 6 months before the half way point of the tenancy

Please explain your answer

Following on from our answer to question 3, the key thing is to ensure that tenants have a meaningful right to go free-of-tie/MRO not later than a year into any agreement (and also that tied/lease tenancy agreements cannot be less than three years).

It is also crucial to have a set maximum time for the entire MRO process, which doesn't need to be and should not be more than 90-days or three months. (The original proposal for England and Wales, voted through by a majority of MPs in the House of Commons was for 90 days; it was then watered down deliberately by the UK Government to undermine the intent of the legislation).

The tenant must have the right to be free of all product and service ties and pay a market rent from this point (date). There must be no way for the pub-owning company to delay this, including by disputing anything or seeking arbitration; if the market rent has still not been finalised; as in, if it is still going through the agreed process e.g. appeal, then an interim rent should be paid from this (above) date. If this market rent figure changes following appeal, then this rental level would be backdated and any adjustments made to ensure that the overall rental figure paid over the full first year would total the correct final market rent figure for the full twelve months.

Question 5: What would be the costs and benefits, if any, on your business and the sector?

It is fundamental to all pub businesses that the operator of that business, in this case the tenant, is able to take a fair share of the profits from the pub and make a living (and pay his or

her taxes, pay staff and bills). That does not happen with far too many tied agreements, with the exploitatively high tied prices that tied tenants have to pay. The tie is routinely abused by the large pub companies (and some other companies that operate it) and this is why legislation including a proper right to go MRO is needed (a right that the pub companies must not be allowed to avoid, as they have in England and Wales.

The pub companies would be forced to reduce tied prices and rents and offer more realistic, fairer agreements, to have a chance of persuading tenants to remain tied, as well as allowing those tenants who still choose to go MRO to right to operate more entrepreneurially and buy beer and all products and services from whomever they choose and whatever suppliers they believe suits their customers. (The current tied model is a clear restraint of trade in denying publicans the chance to buy direct from local brewers and other suppliers).

Overall, therefore, if properly implemented – i.e. if the Code is drafted in a way that actually stops code avoidance by pubcos and stops them evicting tenants to avoid MRO – it will make many pub businesses more sustainable, with the tenant actually taking a fair share of the profits earned from THEIR hard work.

More MRO (free-of-tie) pubs would be a huge boost for Scotland's independent brewing sector. Although there are far fewer tied pubs as a proportion of the overall pub sector in Scotland, as compared to England.

Market Rent Only process: right to appeal

11. The code sets out that where the parties cannot agree the rent for the MRO lease, they would be able to seek an independent rent assessment either jointly or, where they disagree, the Adjudicator can appoint a rent assessor. The rent assessor will determine the market rent. The code requires the independent rent assessor to be a member or fellow of the Royal Institution of Chartered Surveyors (RICS).

12. Representatives of pub-owning businesses suggested that there should be a process to appeal the rent assessor's result if there is a clear error. An appeals process is in place in England and Wales (regulation 38 of their Pubs Code[3]) and this allows tenants or pub-owning businesses to refer the market rent assessment to the Adjudicator within 14 days of finding out what the market rent is, if they do not agree that this is the market rent or where the independent assessor has failed to have regard to documents set out in the legislation or guidance issued by the Adjudicator.

13. We understand from pub-owning businesses operating in England and Wales that this appeals route has been used in a few situations.

14. During the previous consultation, a key concern for tenants was around delays in the MRO process. While we want to ensure that processes are fair and clear, we also want to avoid further delays. It is therefore proposed that we introduce an appeals process, to enable parties to appeal the rent assessment if there is a clear error. To address concerns about delays, it is proposed that this appeal process should occur within the MRO offer process. In other

words, appeals can be raised with the Adjudicator within 14 days of the rent determination, i.e. to run concurrently with the period in which pub-owning businesses are preparing the MRO offer when the rent assessor has confirmed the rent assessment. The appeal could be made by the pub-owning business or the tenant.

Question 6: Do you agree or disagree with the following statement: there should be a process to appeal the result from the independent rent assessor?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your answer

It is important that independent rent assessments can be appealed, but there must be a clear and time limited process, to avoid what has happened in England and Wales, with the regulated pub companies simply delaying all MRO agreements through referring cases to arbitration. There is a similar danger here. We refer to how long the process should take in our answer to question 4. Failing to have a time limit to the MRO - or having it more than 3 months - renders the whole thing potentially meaningless, as has happened in England and Wales with the MRO process being deliberately drawn out by pubcos to last well over a year, in some cases two years. With pubcos already cutting the length of leases, there MUST be a three month limit, from which the tenant is allowed to operate free of all product and service ties and pay a market rent (even if this is an interim rent level, with the final rent level set later).

This is what was proposed in England, before the deliberate and cynical watering down of the MRO right and process which has rendered it unachievable for the majority of tenants. The Scottish Government must not unwittingly do the same thing and neuter the fundamental right to go MRO, which the Scottish Parliament has enshrined in law.

There needs to be a clear time limited process overseen by the Adjudicator. It could make sense to have a second assessor's opinion and this is worthy of consideration, but the fundamental point is to have a time limit of three months for the process to the point of the tenant going MRO.

Just as importantly, there must be clear guidelines for the independent rent assessment itself or there is a real danger that these will not be necessarily independent, nor a genuine assessment of what the market rent should be, as opposed to what the pub company wants it to be. Too many RICS surveyors rely on work from pub companies or accept pub company norms. There is no regulation and we remain very concerned that some surveyors are too close to the large pub companies and accept their wisdom about how much the pub company should earn, as opposed to what the genuine market rent should be.

A genuine independent rent assessment must pay no attention to the rent demanded by a pub company (or the level of tied rent) but instead simply be a free of tie rent based on that particular site being a freehouse in the current trading conditions. The calculations to derive this must be clear and transparent. The Adjudicator must be aware of the concerns about surveyors and properly scrutinise their work to ensure assessed market rents are genuine.

Question 7: Do you agree or disagree with the following statement: 14 days is the right amount of time for either party to appeal the result?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your answer

As above, in England and Wales, the whole MRO process has been a fiasco and tenants are routinely prevented from going MRO (or in effect prevented from doing so because they realise it would take so long as to be beyond the end of the lease).

All elements of the MRO process, including the appeal process, must be restricted to a set period of time as mentioned in our previous answers. Without this the Code will fail.

As already stated, it is also vital that there is a cut off point at 90 days/three months by when a new MRO will come into force, even if the final rent has not been set, with any subsequent final changes then being reflected going forward and with adjustments made to back date to the date of MRO commencement.

Question 8: Should the time period for the appeal be included in the 4 week period to create a MRO offer or should it be additional to this?

Included

Additional

Don't know

Please explain your answer

14 days is a reasonable length of addition to the process and should be additional to the four weeks.

Information for prospective tenants

15. The purpose of requiring pub-owning businesses to provide information to prospective tenants is to assist tenants in their assessment of the risks and rewards of tenancy (third regulatory principle) and to support them in assessing whether they are no worse off than if they were subject to neither a product tie nor a service tie (second regulatory principle)

16. We recognise that tenants and pub-owning business representatives had different views on regulation 10 of the Scottish Pubs Code which sets out what information should be provided to new or renewing tenants, with tenants tending to believe there should be at least the same or more information provided and the pub-owning businesses tending to believe the requirements are too onerous.

Publicly available reports

17. We consider the information requirements in regulation 10 to be proportionate but we propose to amend regulation 10(d)(v), for clarity.

18. Regulation 10(d)(v) requires that pub-owning businesses should provide prospective tenants with "any publicly available reports analysing the trade costs of tied pubs, including the costs of the agreements under which such pubs are occupied.". Such reports include benchmarking data produced by the British Beer and Pub Association[4].

19. We propose that pub-owning businesses be required to provide at least one report (as opposed to any publicly available reports) analysing the trading costs of tied pubs in the UK, including the costs of the agreements under which such pubs are occupied. Pub-owning businesses could choose to provide more reports if they wished.

Question 9: Do you agree or disagree with the following statement: pub-owning businesses should be required to give tied pub tenants at least one publicly available report analysing the trade costs of tied pubs in the UK, as part of the information to be provided to prospective tenants?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your answer

We find this a strangely worded and unreasonably restricted question. What is essential is the pub-owning business supplies proper, full, honest information to all prospective tenants.

When it comes to tied prices, what is really needed is a proper, independent annual price comparison between tied prices and other prices in the sector, including genuine wholesale and brewery prices. One of the key comparisons is amongst the brewing companies who operated tied pubs but also sell their products to other pubs, including free trade pubs and bars (of which there are many in Scotland). This would show the mark-up tied tenants pay and then make it easier for them to understand and consider if the rent is sufficiently low to make the much higher tied prices (and the restraint of trade) worth considering.

Question 10: What would be the impact on the sector?

Much needed transparency. It is notable that the large pub companies are extremely reluctant to publish their tied prices lists (and have rebuked and threated tenants who have published or shared them).

The reality of the tied system must be publicly understood and the reality of the model apparent to prospective tenants who would be much less likely to fail as a result.

If the tie is the mutually beneficial partnership the large pub-owning companies and their lobbyists say it is, they would have no problem in the publication of full, honest and accurate information on tied pricing and the whole model. The fact they do speaks volumes and is another example of why the Code is needed.

Number of operators of a pub

20. The Scottish Pubs Code currently requires pub-owning businesses to provide information to new tenants on the number of tenants who have occupied the pub in the past ten years. It has been suggested that this provision should cover all operators of the pub in the past ten years, not only tenants. This would mean that the figure provided by the pub-owning business would include, for example, those operating under management agreements, and it would therefore better reflect the turnover of occupiers of the pub in recent years.

21. There are many reasons why people may join or leave tenancies, but widening the basis of the evidence provided would enhance the information available to the tenant about the recent occupiers of the pub. We therefore propose to require pub-owning businesses to provide information on the number of operators who have occupied a pub in the past 10 years.

Question 11: Do you agree or disagree with the following statement: pub-owning businesses should be required to provide information on the number of operators who have occupied a pub in the past ten years, as opposed to the number of tenants?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your answer

There should be FULL accurate and honest information provided to all prospective tenants, something that routinely is not what happens currently. This should include the whole recent (at least ten year) history of the pub including all periods of operation (on any basis, not just a tenancy/lease) and any periods of closure (longer than a week).

Far too often, prospective tenants are provided with an over-optimistic and in some cases completely unachievable level of trade and/or profit/earnings. This in itself is a scandal, it is clear mis-selling and leads to publicans failing, despite a decent level of (realistic) trade, which leads to significant loss for them, including losing their deposit and failing to be able to earn from the pub and then being hit with dilapidations.

There should be a proper process for this and we believe that this is something that could be included in the Pubs Code to ensure this transparency. We welcome the suggestion by the Pubs Advisory Service of key questions that the pub company should answer/key areas of information.

Repairs and dilapidations

22. We heard in previous consultations that repairs and dilapidations are one of the most contentious and difficult parts of the tenant-landlord relationship. This remains an issue of concern for tenants who have advised that they can be required to pay for repairs at the start of their tenancy and for dilapidations at the end of their tenancy without having any control over the nature and level of the costs.

23. We recognise that leases will typically spell out how these matters are to be addressed. However, there is a role for Government in making sure that tenants are made aware of their obligations and to ensure there is fair and lawful treatment as tenancies change.

24. The key requirements in the code on repairs and dilapidations are set out below:

"Regulation 10(c) a copy of any dilapidation report prepared in respect of the lease covering the period of the previous tenancy of the tied pub, and

Regulation 10(d)information about—

(i) completed repairs undertaken on the tied pub covering the period of the previous tenancy

(ii)any repairs required to be carried out at the start of the lease by the tenant,

(iii) any repairs required to be carried out at the start of the lease by the pub-owning business."

25. We understand that provision of a Schedule of Condition is standard practice for the industry. In England and Wales, the Schedule of Condition is also taken into account during an assessment of any maintenance or repairs in respect of the premises and before any obligations or liabilities in respect of the condition of the premises are agreed between the pub-owning business and the tied pub tenant. The Schedule is also updated in line with the tenancy or following structural changes or 6 months before the end of the tenancy.

26. It is proposed that the Scottish Pubs Code includes a requirement for a Schedule of Condition to be provided, with similar protections as in England and Wales. This would provide reassurance to tenants about the terms of their proposed lease and the condition of the pub.

Question 12: Do you agree or disagree with the following statement: pub-owning businesses should be required by the code to provide a Schedule of Condition to prospective tenants?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your answer

This is essential and it must be accurate and honest. Tenants often find that repairs are needed, should have been done or that there was a previous commitment to do them, which wasn't fulfilled. Pubcos must be mandated to give all this information.

Tenants are often let down by repairs not being done or not done for far too long, which can damage trade and undermine business (as well as in some cases meaning unacceptable living conditions).

Question 13: Do you agree or disagree with the following statement: pub-owning businesses should be required by the code to provide a copy of the previous dilapidation report, if they are providing a Schedule of Condition?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your answer

This is essential, it is vital for previous dilapidation information to be shared.

It is well known that dilapidations are seriously abused by some pub-owning companies, to both demand sums that are wholly excessive and unreasonable and in some cases, wholly dishonest. It is vital that the Code stamps this out and fully and properly scrutinises dilapidations claims and the whole process. This is something the Adjudicator must oversee.

Question 14: Should pub-owning businesses be required by the code to provide:

a) information about completed repairs undertaken on the tied pub covering the period of the previous tenancy; or

b) information about repairs completed since the last dilapidations report?

They should be required to provide a) information about completed repairs undertaken on the tied pub covering the period of the previous tenancy

They should be required to provide b) information about repairs completed since the last dilapidations report

Don't know

Please explain your answer

We have answered this to say “They should be required to provide a) information about completed repairs undertaken on the tied pub covering the period of the previous tenancy” because there were only two options; however this is not in itself sufficient and the question shouldn’t have been restricted to these two options.

Full information must be provided about all repairs completed – and just as importantly, NOT completed (i.e. identified, including by previous operators) – over the previous five years, as well as the dilapidation report. There are many cases of repairs being identified and not been carried out and the wording here would completely miss this, which would be a glaring omission.

Guest beer agreements

27. Where requested by tenants, the code requires businesses to offer a guest beer agreement in certain circumstances. A guest beer agreement allows a tenant to sell to their customers at

least one beer that the tenant has chosen, at a price of the tenant's choice. The beer can be changed as often as the tenant wishes. The guest beer agreement in the code supports in particular the second and third regulatory principles.

28. In the code, guest beer is restricted to brands of beer which have a production level of 5,000 hL or less. We do not intend to change that provision in the code.

Flow monitoring equipment

29. Flow monitoring devices measure the amount of beer sold by the tied pub tenant.

30. Tenant representatives have proposed that a flow monitoring device should not be connected to any guest beer line because it is not tied beer and therefore there should be no need to monitor flow.

31. Pub-owning businesses representatives have suggested that flow monitoring equipment is useful for a number of reasons, including assisting the operator in business planning and ensuring more accurate rental values.

32. We propose that the code states that guest beer agreements must not require the use of flow monitoring equipment on a line, without the consent of a tied pub tenant.

Question 15: Do you agree or disagree with the following statement: flow monitoring devices should be permissible on guest beer lines only with the consent of the tenant?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your answer

We have answered 'strongly agree' to the question asked, because it asks if flow monitoring should only be permitted with the consent of the tenant – and we absolutely oppose pub companies insisting on it.

However we do not believe pub companies should be permitted to ask for flow monitoring on guest beer lines in the first place. We therefore believe the question should have asked 'do you think guest beer lines should be subject to flow monitoring equipment under any circumstances' and we would have said no, as that is our position.

The whole point of a guest beer right is to allow tenants to have access to buy whatever beer they want from anywhere and sell it at whatever price they wish, with the pubco having no input and no right of oversight.

Due to the extraordinary and wholly unjustifiable differential between tied prices imposed on tenants and brewery prices, the pub-owning companies will seek to increase rent due to the

tenant having a guest beer bought outside the tie and they must not be allowed to do so – and investigations must take place to ensure this does not happen to pubs individually or across the board.

Question 16: What might be the impact of this proposal on tenants?

A proper guest beer right – the ability to buy beer at genuine brewery/free-of-tie prices, not through the pub-owning company (and with them having no involvement or oversight) would be very helpful to all tied pub tenants (and indeed a lifeline for some) by allowing them to make a reasonable margin from the guest beer (something they cannot do from the excessively marked up tied beer they are obliged to buy).

It also allows them to serve beers requested by their customers and including local beers that may well not supply to the pub-owning company (and even if they do, they don't get a fair price from them and would much rather deal direct.

It would be beneficial to tenant, to small brewers and to customers, improving customer choice.

Question 17: What might be the impact on pub-owning businesses?

Pub companies will claim it will be determinantal to them, as they always do, but the reality is that they are highly profitable and take too much profit from tied/tenanted pubs, leaving the actual operator, the tenant, with an unfairly low share (or none in some cases) of the pub's profits. This is precisely why legislation is needed in the first place. The pub companies can and will adapt but it will stop unfair and unsustainable agreements (and if they wish to continue to operate the tie, pub companies will have to make them much fairer to persuade tenants to take them).

The tie as currently operated is bad for tenants, bad for customers and bad for Scotland's small brewers which is why reform is needed and the Code should allow a guest beer.

Gaming machines

33. In the second consultation on the Scottish Pubs Code, we asked whether gaming machines should be covered by the code. We also proposed that pub-owning businesses should not be able to make it a mandatory requirement in a new tied-pub lease that a tenant has to lease a gaming machine from their pub-owning business. The code includes such a requirement, preventing a mandatory requirement in a new lease for a tenant to purchase or rent gaming machines from the pub-owning business or a supplier nominated by the pub-owning business.

34. We have had feedback from tenant representatives to the effect that existing tenants should have similar rights on gaming machines as new tenants.

35. We recognise that there may be some existing tenants who have agreed gaming machine terms in their lease. Existing lease terms are not covered by the code but it is proposed that a pub-owning business should not be able to restrict a tied pub tenant from purchasing or renting a single non-tied gaming machine, in addition to any agreement on gaming machines set out in their lease. We consider that this will give similar opportunities to existing tenants as are being provided for new tenants.

Question 18: Do you agree or disagree with the following statement: tied pub tenants should be able to purchase or rent a single gaming machine per licensed premise, in addition to any gaming machine(s) already provided for in their lease?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your answer

We strongly agree with this, however, our view remains that the machine tie is wholly unacceptable and should not be allowed. It is absolutely appalling that companies are allowed to profit from fruit machines and other gaming machines in a tenanted pub, operated by an independent small business (the tenant). It is an example of how pernicious and exploitative the tied model has become (when only a few decades ago, it was about a brewery supplying only its own beer to its tenants, a higher prices but in return for a much lower rent - and this generally worked for both parties!) The tie has became a monster since then and is no longer remotely justifiable and the machine tie most certainly isn't, as concluded by the House of Commons Select Committee that has looked into it.

If the provision to have an extra free of tie gaming machine comes in (which is welcome although not as good as abolition of the tie) then, as with the guest beer right, the pubcos must be legally prevented from putting up rent or making any other detrimental changes to terms. This must be monitored and enforced by the Adjudicator.

Question 19: What would be the impact of this proposal on tenants?

It would only represent a small, but a positive change, as opposed to the current wholly unjustifiable system of gaming machines being tied. It would add a small but positive assistance to tenants.

Question 20: What might be the impact of this proposal on pub-owning businesses?

None. They know as well as everyone else does that the gaming machine tie is an outrage and must wonder how they have got away with it for so long. It only hasn't been abolished in England and Wales due to the weak decision making of the UK Government. The Scottish Government should show strength and leadership and ban it altogether as it is clearly and wholly unjustifiable.

The original beer tie, that was devised as a way of operating brewery owned pubs on the basis of tenant paying a peppercorn rent in return for paying above market prices for beer, cannot now be justified now that it is operated by huge companies (including offshore property companies and investment funds) to tie pub tenants on ALL products, services and even fruit machines i.e. charging them above market prices/taking a cut of the profits. Unless regulated, it is operated as an exploitative model which contrary to what is in the supporting information in the consultation, is BAD not only for Scottish pub tenants but also for Scottish communities. Any 'investment' in tied pubs is not really investment, it is effectively a 'soft' loan to the tenant, as they pay it back through increased rent or pricing.

The Scottish Government must avoid the example of England and Wales where the then Conservative Government deliberately watered down and neutered the legislation and Pubs Code in England, because they never wanted it in the first place and listened and colluded with the pubcos and large breweries and their lobbyists. The Scottish Government must understand that the propaganda peddled by them is exactly that and not to be trusted.

If the tie they operate is so wonderful, then why would these big corporates and their well paid lobbyists be so afraid of Scottish tenants having the basic right to buy beer direct from Scottish breweries and pay a fair, independently assessed rent. That says it all.