
From: The Scottish Licensed Trade Association [theslta@aol.com]

Sent: 14 June 2013 12:34

To: Pubs Consultation Responses

Subject: PUBS CONSULTATION RESPONSE - SLTA

Response to the Westminster Government's consultation on Pub Companies and Tenants.

The Scottish Licensed Trade Association is the leading trade body representing the independent liquor licensed trade in Scotland, including Public Houses (both free trade and tenanted), Hotels, Convenience Stores, Restaurants and Late Night Entertainment premises.

The Association's response is in a general format rather than a focused response to the individual questions posed, as the major concern this organisation has with the proposed legislation is that, if introduced in its current form, Scotland will be excluded from the legislative jurisdiction of this proposed statutory code.

Initially the Association very much welcomed the announcement of the consultation to establish a statutory Code and Adjudicator to oversee the relationship between pub companies and their tenanted licensees. However this quickly turned to disappointment when it was realised that Scottish tenants would be excluded from this. The SLTA has had preliminary discussions with the Scottish Government for the introduction of a Ministerial level regulator/adjudicator to oversee the entire liquor licensed trade industry, including the operation of local authority licensing boards which are virtually autonomous. However this is only in the early stages.

The relationship between Pubcos and Tenants has always been a UK wide matter. Whilst the Association recognises that this is a devolved matter to the Scottish Parliament, it seems inconceivable that should a statutory code of practice be introduced by the Westminster Government, a discriminatory "two-tier" level of protection and recourse will be in force whereby Scottish based tenants of Pubcos, the headquarters of which for the overwhelming majority are based in England, will be excluded from the jurisdiction of this proposed statutory code of practice. As discussions with the Scottish Parliament are at a very early stage, there is presently a great deal of concern that with an estimated 30% of "pub" licensees in Scotland being in a tied agreement of some sort, almost 1500 tenanted licensees will fall outwith the proposed statutory code for Pubcos and Tenants.

With most Pubcos being based in England and therefore their tenancy agreements, we assume, are governed by English law and the jurisdiction of English Courts, our Association is of the view that Pubcos would effectively have to abide by this statutory code whether their tenants were in England/Wales or Scotland. If this is not the case then we would suggest the Westminster Government investigate the merits of legislating for the inclusion of some form of prorogated jurisdiction clause to be included in any English based Pubco tenancy agreement, when referring to premises situated within Scotland and for the prorogated jurisdiction clause to be applied for the sole matter of adhering to the statutory code of practice.

The Scottish Government is gathering information from the Scottish Licensed Trade regarding a Statutory Code for Pubco tenants in Scotland. However, will the Department for Business Innovation & Skills be making approaches to the Scottish Government to seek the introduction of a Legislative Consent Motion in the Holyrood Parliament to allow the

Westminster Government to legislate for this matter? The SLTA is of the opinion that with the lack of a code of practice at present covering Scottish licensed trade tenants, and with little likelihood of a code of practice being introduced in the foreseeable future, a Legislative Consent Motion would be the preferable route to include Scottish licensees in a UK wide Statutory Code for Pubcos.

Until we are clear on where Scottish licensed trade tenants licensees stand on the jurisdiction of this legislation, The Scottish Licensed Trade Association is in principle supportive of the introduction of a Statutory Code of Practice and an independent adjudicator to govern the Pubco/tenant relationship.

The Association does not agree with the Code of Practice being binding only on companies with 500 or more tenanted licensed premises. This should be set at a much lower level and would suggest this be nearer 25 or 50. In recent times companies have "split" or set up a different "divisions" within the company and we are of the opinion that, from a Pubco perspective, it could be beneficial for a company with perhaps 900 pubs to "split", drop below the suggested 500 level and fall out with the scope of the proposed Code of Practice. Parallels can be drawn with the introduction of the "Beer Orders" in 1989. The Orders restricted the number of tied pubs that could be owned by large brewery groups in the United Kingdom to 2,000, and required large brewer landlords to allow a guest ale to be sourced by tenants from someone other than their landlord. The industry responded by simply spinning off purely pub-owning companies ("Pubcos"), such as Punch Taverns and Enterprise Inns, from the older brewing-and-owning companies and then "supplied" the newly formed Pubco's with their beer. The Beer Orders were revoked in January 2003, by which time the industry had been transformed and basically nothing positive had been achieved for tenants. It would obviously not be desirable for Pubco's to do the same in respect of the Code of Practice.

Ironically BISC are currently looking to force certain banks to "split" – perhaps inadvertently this may encourage Pubco's to follow suit and cognisance should be taken of this in any proposed legislation.

The Scottish Licensed Trade Association is very much supportive of the introduction of a mandatory "free of tie option" to be included in tenancy agreements and the overarching principles of fair and lawful dealing and that tied tenants should be no worse off than a free-of-tie licensee. The Association also agrees with the proposed provisions as listed in question eight of the consultation document. With the "buying power" currently enjoyed by Pubcos, they may well retain business from tenants in respect of gaming machines and other drinks, only they will be forced to charge a more realistic and competitive price.

With regard to the funding of the adjudicator, we would draw a parallel to the current arbitration services Pubs Independent Conciliation and Arbitration Service and the Pubs Independent Rent Review Scheme which are currently funded by the Industry and where tenant licensees pay a nominal fee for using this service. We see no reason why this system of funding could not be mirrored for this statutory adjudicator/arbitrator service.

Whilst acknowledging that this proposed legislation excludes Scottish tenanted licensees, we hope that The SLTA's response will be accepted by BISC.

Colin A. Wilkinson
SLTA Secretary.

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