



Department for Business, Innovation & Skills

Pub companies and tenants - A government consultation

Response form

The consultation will begin on 22/04/2013 and will run for 8 weeks, closing on 14/06/2013

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation response form and, where applicable, how the views of members were assembled.

This response form can be returned to:

Pubs Consultation
Consumer and Competition Policy
Department for Business, Innovation and Skills
3rd Floor, Orchard 2
1 Victoria Street
Westminster
SW1H 0ET

Email: pubs.consultation@bis.gsi.gov.uk

Please tick one box from a list of options that best describes you as a respondent. This will enable views to be presented by group type.	
Representative Organisation	
Trade Union	
Interest Group	
Small to Medium Enterprise	√
Large Enterprise	
Local Government	
Central Government	
Legal	
Academic	
Other (please describe):	

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

Consultation questions

Q1. Should there be a statutory Code?

- i. Yes I do. I believe that a statutory code would actually benefit all of the interested parties including the Pubco's whose business models often seem to support taking short term views rather than a more strategic one**

Q2. Do you agree that the Code should be binding on all companies that own more than 500 pubs? If you think this is not the correct threshold, please suggest an alternative, with any supporting evidence.

- i. I think this threshold is too high. It should be a code common across the industry. This also is less liable to abuse from some companies that would simply restructure to be able to sit outside the code**

Q3. Do you agree that, for companies on which the Code is binding, all of that company's non-managed pubs should be covered by the Code?

- i. Yes I do. It is key that this code covers all of the different types of relationship that exist between companies and either their employees, tenants or leaseholders in order to set common standards and a level playing field.**

Q4. How do you consider that franchises should be treated under the Code?

- i. In common with the other flavours of business relationship as per my answer to Q3 above.**

Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence.

- i. I don't have any cost data to share and it would be wrong to assimilate. However there are a number of areas where benefits are to be gained and these in turn can drive cost out of the model for all of the parties through economies of scale, reduced costs in administration, taking a medium/ long term view; greater competitiveness improved cash flow and profits for all of the stakeholders, better investment in the infrastructure and real estate, fewer business fails (and the costs associated with that), benefits to the community. There is a strong argument that this model should be self funding**

Q6. What are your views on the future of self-regulation within the industry?

- i. The track record has been poor to date. I have little confidence that it would be any better in the future. The case studies and evidence speak for themselves. It is not a balanced model**

Q7. Do you agree that the Code should be based on the following two core and overarching principles?

- i. *Principle of Fair and Lawful Dealing***
- ii. *Principle that the Tied Tenant Should be No Worse Off than the Free-of-tie Tenant***

- I. Yes I do on both principles except the code needs to ensure that it covers all the forms of relationships that exist within the industry e.g.. Leaseholders, franchisees etc

Q8. Do you agree that the Government should include the following provisions in the Statutory Code?

- i. *Provide the tenant the right to request an open market rent review if they have not had one in five years, if the pub company significantly increases drink prices or if an event occurs outside the tenant's control.*
 - a. Yes
- ii. *Increase transparency, in particular by requiring the pub company to produce parallel 'tied' and 'free-of-tie' rent assessments so that a tenant can ensure that they are no worse off.*
 - a. Yes
- iii. *Abolish the gaming machine tie and mandate that no products other than drinks may be tied.*
 - a. *Not necessarily so, but any ties need to be "fair" and contractually balanced*
- iv. *Provide a 'guest beer' option in all tied pubs.*
 - a. *I think the option should be there so that if having guest beers is of benefit as part of that outlets business model then it can be used. Remember, it is in all of the parties interests for the business to be profitable!*
- v. *Provide that flow monitoring equipment may not be used to determine whether a tenant is complying with purchasing obligations, or as evidence in enforcing such obligations.*
 - a. *If the tie arrangements are fair and equitable so that a competitive price can be charged to the customer and a reasonable GP maintained, I don't see a problem with this sort of equipment. In actual fact the statistics that are available from the flow monitoring can actually help you run your business and identify operational issues that may exist.*

Q9. Are there any areas where you consider the draft Statutory Code (at Annex A) should be altered?

- i. I think this a really good starting point on which to move forward with the proviso that it can be matured based on the operational data that comes back from the industry i.e. there is a recognised review process in place to ensure that it remains relevant to the changing business and economic environment

Q10. Do you agree that the Statutory Code should be periodically reviewed and, if appropriate amended, if there was evidence that showed that such amendments would deliver more effectively the two overarching principles?

- i. Yes as per my answer to Q9 above

Q11. Should the Government include a mandatory free-of-tie option in the Statutory Code?

- i.* Yes, but the proposals need to be balanced and fair for all of the stakeholders to the Agreements

Q12. Other than (a) a mandatory free-of-tie option or (b) mandating that higher beer prices must be compensated for by lower rents, do you have any other suggestions as to how the Government could ensure that tied tenants were no worse off than free-of-tie tenants?

- i.* The government needs to look right across the market, not just this specific area i.e. the supermarkets where there is still irresponsible alcohol trading taking place at ridiculously low prices. The government needs to understand the benefits that professional licensees bring to their communities and recognise that within the code!

Q13. Should the Government appoint an independent Adjudicator to enforce the new Statutory Code?

- i.* Absolutely, it won't work otherwise!

Q14. Do you agree that the Adjudicator should be able to:

- i.* *Arbitrate individual disputes?*
 - I.* Yes; essential
- ii.* *Carry out investigations into widespread breaches of the Code?*
 - I.* Again essential. The code will be toothless otherwise and there should be legal and material consequences where breaches are found to take place and I include all of the interested parties when I say this not just the companies!

Q15. Do you agree that the Adjudicator should be able to impose a range of sanctions on pub companies that have breached the Code, including:

- I.* Recommendations?
- II.* Requirements to publish information ('name and shame')
- III.* Financial penalties?

1. Yes to all of the above

Q16. Do you consider the Government's proposals for reporting and review of the Adjudicator are satisfactory?

- i.* Yes, subject to review in operation

Q17. Do you agree that the Adjudicator should be funded by an industry levy, with companies who breach the Code more paying a proportionately greater share of the levy? What, in your view, would be the impact of the levy on pub companies, pub tenants, consumers and the overall industry?

- i.* See my earlier point. If the model is right this should be self funding based on the efficiencies gained and higher sustained profits being generated by the operators and in deed the companies themselves