



## 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](mailto: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 <input checked="" type="checkbox"/>
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?**

**YES**

**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.**

**YES**

**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?**

**YES**

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

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

**REDUCTION IN TENANT TURNOVER & A BETTER DEAL FOR PUBLICANS AND CUSTOMERS**

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

**DECLINE IN OPERATING STANDARDS**

**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* AGREE**

**ii. *Principle that the Tied Tenant Should be No Worse Off than the Free-of-tie Tenant* AGREE**

**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.* AGREE**

**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.* AGREE**

**iii. *Abolish the gaming machine tie and mandate that no products other than drinks may be tied.* AGREE**

**iv. *Provide a 'guest beer' option in all tied pubs.* AGREE**

**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.* DISAGREE**

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

**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?**  
**AGREE**

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

**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?**

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

**Q14. Do you agree that the Adjudicator should be able to:**  
*i. Arbitrate individual disputes? AGREE*

*ii. Carry out investigations into widespread breaches of the Code? AGREE*

**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? AGREE*

*II. Requirements to publish information ('name and shame') AGREE*

*III. Financial penalties? AGREE*

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

**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? IMPROVED FOCUS ON STANDARDS**

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**From:** ]  
**Sent:** 12 June 2013 20:35  
**To:** Pubs Consultation Responses  
**Subject:** Pubs Consultation

Dear Sirs

I have been asked by Enterprise Inns to provide my thoughts on the above subject.

### **Background**

We took on the tenancy of the above premises in . . . . . 3. The team consists of . . . . .  
My background is in retail management whilst my wife and son have worked in retail shop environments at various levels.

Having looked at the partnership agreement offered by Enterprise we were happy to proceed and sign up for a period of /ears.

### **Position**

On the subject of a statutory code and an adjudicator I am in agreement that this would be a beneficial step to both tenants of licenced premises and indeed pub companies. Statutory regulation will help to drive up operating standards within the sector and help ensure a fair and flexible deal for all parties concerned.

### **Thoughts and Observations**

Looking at the positive aspects of the current business relationship with Enterprise it should be said that the rent required to start to operate a licenced premises is relatively affordable and can offer a route to a business start up with low capital investment for the right person/persons.

This is where the issue becomes clouded in my opinion. When you start to analyse the additional charges and running costs associated with running a business in this sector the tenant needs to possess sufficient business operating skills to make a sound business decision before committing to an agreement. Do all pub companies carry out adequate checks to ensure that the people being signed into agreements are suitably qualified or experienced to operate a business?

Perhaps a more robust vetting process of a potential tenants business acumen prior to signing a partnership tenancy would increase the number of success stories and reduce the number of failed tenancies.

The purchase of stock being tied to the pub company is fine but the tie release fees charged can soon mount up and significantly increase your monthly running costs.

Another area where the odds are stacked in the pub companies favour is the difference that a tenant has to pay over open market prices for wet product purchases when entering into a pub tenancy agreement. So unless you opt out of the tie and pay the tie release fees the margin can be significantly reduced for the tenant on wet sales however for the pub company it is a WIN WIN situation. Pub landlords are forced into charging higher prices which ultimately limits the affordability of a visit to the pub for potential customers therefore reducing footfall through the door. This scenario is detrimental to both the business operator, the pub company and the customer.

### **Summary**

Overall I believe that Enterprise provide a first class option for would be landlord/tenants however statutory regulation and adjudication would help the small fish to maintain a more sustainable business model.