



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	X
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. I think it should be lower to avoid large to medium sized companies finding ways to avoid the limit by having various companies under one umbrella. I think a 250 limit would make that much harder to do but allow small, family or community based companies to be unfettered. Signing up to the code should be compulsory for smaller companies after any issue of unfairness has come to light about their practices.**
- 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? They should be included.**
- Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence. Publicans would achieve an income. Less pubs would close or regularly change hands due to business collapse, the pub sector would be more stable. I just had to surrender my lease, the two leases before me did the same. The pub suffers for this lack of continuity and investment.**
- Q6. What are your views on the future of self-regulation within the industry? It is a paper exercise. When pubco's act against their codes they simply make their tenants sign a gagging/disbarment clause in order to give up their lease when they are unable to further finance their tenure.**
- 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 YES***
 - ii. *Principle that the Tied Tenant Should be No Worse Off than the Free-of-tie Tenant YES***
- 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. 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. Yes***
 - iii. *Abolish the gaming machine tie and mandate that no products other than drinks may be tied. Yes***
 - iv. *Provide a 'guest beer' option in all tied pubs. Yes***

- 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. Yes***

Q9. Are there any areas where you consider the draft Statutory Code (at Annex A) should be altered? That pubco's do not have any authority to alter a tenants right to using statutory arbitration at any time.

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? Yes

Q11. Should the Government include a mandatory free-of-tie option in the Statutory Code? It should guarantee that a fair free-of-tie option is offered.

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? Tenants are generally unable to evaluate and/or dispute rent and costs stated by Pubco's for lack of funds. Even the cost of the PIRRS service is beyond many. Tenants need independent valuation services, the pubco's should provide funds for tenants to procure their own free market evaluations rather than provide figures themselves, usually with no evidence of their validity.

Q13. Should the Government appoint an independent Adjudicator to enforce the new Statutory Code? OH YES! Desperately needed.

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

i. *Arbitrate individual disputes? YES*

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

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? Yes*

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

III. *Financial penalties? Yes*

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? Yes. The distribution of income would be more fairly disbursed. Pubco's would have to pay more attention to actually making their pub businesses successful, rather than relying on tenant turnover and asset stripping to create their revenue. Local micro-brewers would have more outlet

to sell their goods – consumers would have a better experience for that. Short term over large pub co's would possibly fragment with the benefit of many smaller, more financially stable companies replacing them. Long term, growth and investment in the sector could be improved as it becomes a more viable career and small business option.