



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.
<input type="checkbox"/> Representative Organisation
<input type="checkbox"/> Trade Union
<input type="checkbox"/> Interest Group
<input type="checkbox"/> Small to Medium Enterprise
<input type="checkbox"/> Large Enterprise
<input type="checkbox"/> Local Government
<input type="checkbox"/> Central Government
<input type="checkbox"/> Legal
<input type="checkbox"/> Academic
<input type="checkbox"/> Other (please describe): Tied pub lessee

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? A
Franchise agreement is a comprehensive legal document that covers all eventualities that can be envisioned by the Franchisor and as such is (generally) subject to legal validation on behalf of the incoming Franchisee – in this respect a prospective Franchisee is generally assumed to be much more of a 'businessman' than a 'normal' tenant/lessee, however, to ensure a level playing field within the industry the code should be incorporated in the Franchise agreement.

Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence. On sales of
last financial year my rent, as charged by Punch, was [redacted] per year. Calculations I have carried out equating the price charged by Punch by what I could buy it for from local suppliers shows that I am paying over £30,000 more for beers through the tie. Removal of the tie would allow us to receive a salary (we have taken nothing from the business for four years) and also provide funds to re-invest into the business.

Q6. What are your views on the future of self-regulation within the industry? It hasn't worked so far and is unlikely to in the future.

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. However, an open market rent review should be carried out at the inception of the lease also.

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**
- vi. **Are there any areas where you consider the draft Statutory Code (at Annex A) should be altered? YES an open market rent review should be carried out at the inception of the lease.**

Q9.

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? 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? NO

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? 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 costs as proposed would not make much of an impact on the industry.