

From:
Sent: 27 April 2013 12:07
To: Pubs Consultation Responses
Cc:
Subject: Pub Consultation
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.

No, I think the number of pubs is not as relevant as the density. Small brewers control pockets of pubs, their density can be so great that the market works poorly, particularly in terms of consumer choice.

Examples:

Everards in Leicester
Charles wells in Bedford
Adnams in Southwold

All small brewers and small Pub Co's should be included.

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?

As for tenants and Lessees

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

Not enough information to give a view

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

Self regulation is virtually always in tension with the interests of shareholders returns. The imposition of the National Minimum Wage is a perfect example where self regulation, had it been introduced, would have failed.

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* see my answer to Q9.

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. No. The machine income would be wrapped into a rental assumption.

Increasingly food led pubs do not permit machines, this proposal would force up food led pubs rents.

iv. Provide a 'guest beer' option in all tied pubs. Yes, without caveats

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. No. All relationships are stronger if predicated and built on trust this has to be earned and measurement is important in this regard.

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

Please consider if once implemented the beneficiary's of the statutory code would be protected in the example given below:

Vertically integrated Pub Co G has a mixed estate of Managed and Tenanted / Leased businesses. It decides it wants to increase its mix of managed businesses, it has a super high density of pubs in the University town of X. It has correctly followed the new Statutory code, and introduced free of tie leases at market rents in this town for its tenanted estate. It decides strategically to change its internal transfer price for beer between its managed division and its brewing division, but for its managed houses only.

This results in either local extraordinary offers or super low drink prices in its managed estate. Consumer behaviours are changed and share is moved. The tenant can't pay his rent because he can't compete and the pub reverts to the owner Pub Co G at no cost to Pub Co G

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?

Not enough information to give a view

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?

Tied tenants of a vertically integrated brewer should be entitled to buy beer at the same cost as that brewers managed estate.

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?

More entrepreneurs and SME start ups would be brought into the sector these start ups would breathe life into small brewers and drink providers volumes. Business owners who are driving pubs away from beer into wine and soft drinks in search of non punitive margins would push beer (probably local beer) back onto their pubs agenda.

New profit share arrangements (franchises) would emerge with capital and returns being shared between building owners and entrepreneurs. A model of a % share of turnover or profit will replace the existing rent and wholesale model.

