



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	<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 because the previous attempts at self regulation have failed.

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.

The 500 pub threshold is a good idea in order to protect the smaller pub-cos who brew there own products to ensure that they have an immediate route to market, however the legislation needs to be workable in order to prevent the large pub-cos finding a way round the proposed code as they did with the beer orders act which has led to the current situation.

As an alternative to the 500 threshold, as an idea what about enforcing the proposed code on all pub-cos irrespective of how many pubs they own who do not conduct brewing operations ?, as the current situation stems not from a lack of product availability or poor selection (punch taverns and enterprise inn have access to 1000s of different products available to there tenants) but the actual prices they charge for the products that have to be sourced from them.

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, because it would be easy to force out existing tenants from profitable sites and convert them to managed sites.

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

Not having any experience of the franchise model we are unable to comment, however we feel that the code should be applied to all tenants / lessees / franchises or a wider definition such as " any person / partnership / limited liability partnership / limited company entering into an non managed agreement with a pub company " in order to prevent the pub companies from changing tenants status to franchisees.

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

As a small multiple operator implementation of the code whereby we will be no worse off than a free of tie tenant would mean increased profitability, which would mean that our V A T returns would be greater and our overall company profit would increase hence paying more corporation tax. The ability to reduce our prices in order to compete with companies such as Witherspoon, if required. The other benefits would mean that pubs would be more profitable and would encourage more people into the trade which would create a more diverse range of operations, also with a free of tie guest beer option this would help support smaller local brewers gain a foothold within there local marketplace.

In addition we would be able to afford to invest more in our pubs and create more jobs as we would be able to afford more staff, which in turn would generate more national insurance contributions and employment taxes payable to the government.

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

Our views of self regulation are very poor, as there has been numerous enquiry over the years and the pub-cos have only made minimal changes to there operations, for example it has been recommended numerous times that the machine tie should be abolished as it creates no benefit and the pub-cos have refused to do this

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

We agree that the code should be based firmly around option I & ii, however we feel that this would be difficult to implement and it would have to be conducted on a pub by pub basis taking into account various local factors, also there should be a provision whereby we can make our own comparisons independently of any pub-co by obtaining prices from independent wholesalers, such as L W C / bookers etc and the pub-cos should be forced to release more information on past barrel-age figures / expected barrel-age figures on a product by product basis in order to obtain competitive quotes from other sources, as we feel the pub-cos would only give limited information in order to make free of tie comparisons. Also it would be a good idea to restrict pub-cos involvement within the products supply wholesale market as they could "re - route" the higher prices through the wholesale sector.

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 we agree with this provision, in 2008 our first pubs takings halved due to the banking crisis and we were nearly forced into bankruptcy we asked for a rent concession / review from the pub-co and they dragged there heels and took nearly 6 months to come to a decision about a rent concession, when they finally made a decision they refused to reduce the rent, because we were "over rented" we were forced to breach our tie and buy products from wholesalers as the pub-co would not supply products to us, we survived but then the pub-co fined us for breaching the tie.

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 agree but we approached our pub-co about a free of tie lease and the immediate reaction was to treble the rent as being free of tie deprived them of an income stream so they tried to recoup it with increased rent, we think when comparisons are laid down there should also be a provision within the code whereby the rent should be assessed based purely on what the individual building would achieve if it wasn't a pub.

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

Agreed as the machine tie offers no value

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

Agreed, as previously stated

- 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.**

Agreed, as the flow monitoring equipment is not calibrated or regularly inspected and if pub-cos were fairer with pricing there would be no need to breach the tie.

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

Yes, a "significant price increase" by the pub company should be more defined and comparisons should be made with price increases within the wholesale market.

Regular price comparisons should be made with the wholesale market and price differences should be highlighted and justification given as to why prices are higher.

The SCORFA argument should be dismissed as irrelevant as in our experience we have no additional support from our pub company in terms of marketing, free sky TV or anything else.

Within the code there should be reference made to open book accounting, in some instances pub companies insist on using their "approved accountants", such as a company called within a tenants business this is wrong as a businessman / women you should be allowed to instruct your own favoured accountants.

Also the code should apply to all tenants with existing agreements in place or existing tenants should be given access to operate their business under the new code with immediate effect.

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?

Agreed, also as previously mentioned the code should be constructed in way where a pub company cannot exploit the code and continue with there current practices.

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

Yes, so that there is a completely level playing field for all persons / companies who operate pubs within the trade. And individuals / companies can make their own choices whether to be tied or untied.

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?

Government could ensure that any tied tenant is no worse off than a free of tie tenant by consulting with free of tie operators and independent drinks wholesalers over pricing policies and ensuring that the pub companies are charging no more than a rival independent supplier for products unless specifically agreed by the tenant in terms of lower rents.

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

Yes, it should be completely independent from any influences from any party connected with the brewing / pub industry.

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

Q 20.

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 code should initially be funded by an industry levy but the government should also bear some of the cost as I feel that if the code is funded wholly by the pub companies it would not be independent, the cost could be met by increased tax returns from individual tenants due to improved profitability within pubs or a levy could be placed on each individual pub connected to business rates.

Any pub-co that has breached the code should pay large financial penalties to avoid a situation whereby "is cheaper to pay the fine" and continue on with there current practices.

In my opinion if the full cost of implementing and running the regulator the levy imposed on the pub companies would be re charged back to there tenants and disguised in some way.

In my opinion introducing the levy will not make any difference to the consumer as they are not directly affected by the pub-co – tenant relationship, however it would make some pubs viable once again and it could reduce the amount of closures that have decimated the industry over the past 5 years and give them the ability to compete with some managed operations which would ensure greater consumer choice.