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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.
Interest Group/Individual
[Public Affairs Officer, CAMRA]

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. (Those in support of this are not seeking to abolish the Tie, but to seek a form of regulation that actually works)

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 code should be binding on all companies owning more than 500 pubs. However, there is an argument for giving the Secretary of State the power to vary the threshold if there is evidence that pubcos are taking steps to artificially subdivide or split its estate to avoid the duty to comply, or if there is evidence that other pubcos with a smaller tenanted/leased estate (such as Fullers, who have around 200 such pubs) are breaching the Code repeatedly.

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. The most recent Annual Report for Enterprise Inns for which figures are available makes it clear that they are struggling to attract lessees under the current arrangements; a little over one-quarter of current tenants in their lease estate are on transitory management arrangements on temporarv leases or similar. The same was the case for several pubs on the disposal lists of the pubcos: the landlord at the in 2009 when the pub was shut by Enterprise at less than one day's notice to him when the pubco announced it had been sold for conversion to housing using a restrictive covenant to prevent it reopening as a pub. (In March 2010, the covenant having been rescinded, the pub reopened under free of tie and remains open under his management)

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.
The local evidence in is that without meaningful reform, the tied sector which forms a considerable proportion of urban pubs in particular face a bleak future. Of the 7 Admiral pubs in the CAMRA branch, in January 2013 all 6 tied pubs had their leases up for sale. One well-established and acclaimed pub owned by Enterprise Inns has made representations to me and to Greg Mulholland MP because it feels intimidated from making a submission to this consultation while in dispute with Enterprise: the publicans are absolutely certain they would be victimised were they to speak out. The same is true of two local craft brewers – both new in the last 5 years – who have told me they fear that if they make public their support for the Fair Deal for your Local campaign for full reform including the 'no worse off' principle and fair market rent option, their products would be removed from the SIBA Direct Delivery Scheme which is the only form of market access to the tied sector available to them. This culture of fear is evident throughout the trade, and is symptomatic of a concern that the attitude of some pubcos is little short of gangsterism. Therefore some of the worst cases of abuse will not be documented by this consultation.

The principal cost will not be a new one: reform is likely to mean the pubcos continue their existing programmes of disposal of pubs. This is likely to mean that the proportion of the sector that is tied will reduce. As evidence submitted to this consultation by the Social Liberal Forum among others will demonstrate using statistics supplied by CAMRA and CGA Strategy (trade market research experts) demonstrating that tied tenants are considerably worse off than those free of tie costing up to £100 million in tax credits to the tied sector, this reduction will help the

Exchequer. Critically, implementation of the principle that a tied lessee can be no worse off than one free of tie will mean a reduction in the tens of thousands of employees needing tax credits, and also an increase in income tax and National Insurance revenues.

Another benefit will be a slowing in the number of pub closures. Locally, more tied pubs have closed than those free of tie. In the CAMRA branch, we estimate that some 29 pubs or bars have closed (net) in the past 5 years. Of these, removing the one town centre bar, a clear majority – almost two-thirds (17 of 28 – 61%) were owned by a pubco. Of the rest, ownership of several was unknown and unclear.

The full table is [pubco-owned establishments in red]:

Pub	Place	Closure year	Status	Pub co
		2008	Housing approved	Unknown
		2008	Now a restaurant	Laurel Inns
		2008	Shop	Punch
Beehive	Upper Basildon	2008	Housing approved	Independent
Fox and Hounds	Farley Hill	2009	House	GK
		2009	Empty	GK
		2009	Empty	Enterprise
		2009	Converted to community space	GK
		2009	Empty	Unknown
Royal Oak	Shurlock Row	2009	House	GK
Lamb	Theale	2009	Empty	Nomura Bank - possibly pubco?
Redheads Wine Bar	Theale	2009	Gone for good	Independent
Star	Caversham	2010	Co-Op	Enterprise
		2010	Empty	Punch
		2010	Jelly	Property company Brook Henderson
		2010	Empty. Looks like a shop	Admiral
		2010	Flats	Enterprise
		2010	Indian	Hall & Woodhouse
		2010	Empty	Unknown
		2010	Empty	Enterprise
Rising Sun	Burghfield	2011	Looks like a shop	Enterprise
		2011	Tesco!	GK
		2011	Wound down by RBC	RBC
Seven Stars	Knowl Hill	2012	Forcibly closed by Brakspear	Brakspear
		2012	Empty	Unknown
Dog & Partridge	Riseley	2012	Permission for housing	Enterprise
		2012	Empty	Enterprise
		2012	Sainsbury's conversion under way	GK
		2012	Empty	GK

In summer 2009 as survey of publicans in the area. The findings (see the report at http://79.170.40.44/readinglibdems.org.uk/wp-content/uploads/2010/04/pub_survey_0809.pdf) were stark and illustrated two things in particular:-

- That a majority of licensees were earning under £15,000 per household per year, but also that the situation appeared to be worse for pubco lessees (75% as opposed to 50%);

- That pubco lessees, several of whom were prepared to share confidential information with me, were being charged a premium usually of over 40%, averaging 50%, and in some cases up to 64%. Price lists from Enterprise Inns and another pubco were supplied to me alongside free trade costs.

Nationally the evidence from the pubcos' own published information is damning. Enterprise Inns' own annual reports show a sharp increase in the proportion of lessees in situ for less than one year, which suggests that the tied trade is becoming less attractive for industry entrants:-

- To March 2011 845 of 6497 13%
- To March 2012 1100 of 6413 17%
- To March 2013 1463 of 5720 25.6%.

The disproportionate rate of pub disposals and closures under pubcos (Enterprise has shed 3,000 pubs – more than one-third of its estate – in seven years, to fund debt repayments) is a further indication of the manner in which pubcos are particularly responsible for pub closures. It is in the interests of the economy as a whole to seek the slowing and reversal of recent historic pub closure rates, currently running at around 18 a week. The rate of disposals is not taken into account in figures owned jointly by pubco lobbyists the British Beer & Pub Association which have been the subject of some dispute.

Q6. What are your views on the future of self-regulation within the industry?
Self-regulation cannot have a future as the evidence is that it has demonstrably 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

This is a basic principle of natural justice, and is important.

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

This is absolutely critical to the principle underpinning the legislation.

The) (tied to Enterprise Inns) have decided to stop serving draught beer on 1 June 2013 due to the 66% markup in wholesale prices from their pubco – a price they have no choice but to pass on to their customers.

In the rare examples where the big 3 pubcos have offered free-of-tie leases, typically they have come at a cost of more than doubling their rent. Sometimes even this has been deemed insufficient. My local – – was taken on in 2002 by a couple, . who were locals, under an Enterprise Inns lease (the pub was transferred to Admiral shortly thereafter). Despite being forced to subsidise their incomes by a pension and income from rental of their property, they made a success of the pub which won CAMRA Pub of the Year awards, and was twice awarded the status of CAMRA Regional Cider Pub of the Year. It won a SIBA award in 2013 and a 'Pub of the Decade' award from the Society for the Preservation of Beers from the Wood. They invested in the premises which were dilapidated when they took over (a hole in the roof in the Gents being one obvious example) – but when it came to renewing the lease, Admiral were not prepared to be flexible. let it be known they offered to more than double their rent to twice what Admiral was prepared to offer under the tie; even this was refused. They left in (after a battle over dilapidations) and their successor was not even allowed to stock any range

of bottled or draft cider under Admiral's tie, in spite of the pub's award-winning status. That has harmed the pub's reputation and lost it trade it could ill afford to turn down.

By contrast, despite misleading claims by pubcos about the entry cost, there are numerous examples of rents being reduced for free of tie pubs:-

- The [illegible], shut by Enterprise in 2009, reopened in March 2010 after a vigorous community campaign under the same manager. He told me his rent fell from £17,000 per annum under Enterprise to £13,000 under the private owner free of tie.
- Current examples of affordable free-of-tie leases offered by the leading property company Fleurets at the time of writing (June 2013) include the Du Cane Arms near Witham, Essex (http://www.fleurets.com/propertyimages/pdf/E-4185.pdf) with a relatively small capital investment of £50,000 required, and the White Hart at Little Waltham near Chelmsford, Essex (http://www.fleurets.com/propertyimages/pdf/E-5237.pdf) at a rent of £19,000 per annum, again totally free of tie, with no mention of capital required.
- By contrast, the average of the nearest 5 available leases on the Enterprise Inns site gives a monthly rent of some £37,000 for pubs which are certainly, from the perspective of the customer, no more attractive.

On a recent BBC television interview http://www.bbc.co.uk/programmes/b021469f Brigid Simmonds, the Chief Executive of pubco lobbyists the British Beer & Pub Association, asserted that: "For paying more for their beer, they pay less for their rent. That's the way the equation works."

Now we know that not to be true:
knows full well that for the leased pubco tie, that is absolutely not the equation – their equation is based on higher prices and higher rents - and indeed they oppose the imposition of any such equation precisely for that reason!! Tied rents are now MORE on average than free of tie rents (ALMR benchmarking). The unfairness is not only caused by the 'dry' rent (see above) but the addition of the 'wet rent' that is the inflated prices for products charged under the tie. In 2009 my survey calculated the average 'wet rent' mark-up in tied Reading pubs at 50%.

These figures have got worse through above-average inflation of pubco prices since 2002. A member of the Licensees supporting Licensees group sets them out as follows:

Brand	2002 price/pint		2009 price/pint	% increase
Heineken	£1.09		£1.67	53%
Stella Artois	£1.15	(5.1% ABV)	£1.55 (5.0% ABV)	34%
Hoegarden	£1.30	(5.0% ABV)	£1.82 (4.8% ABV)	40%
Boddingtons Draughtflow	£0.88	(3.8% ABV)	£1.35 (3.5% ABV)	53%
Banks Bitter	£0.88		£1.22	38%
Greene King IPA	£0.86		£1.25	45%

The increases shown are made worse when you consider that in many cases the ABV is reduced thereby reducing the duty paid.

The average rate of inflation per annum across the same period, excluding mortgage interest, was 2.84%, giving a compound rate for the period from 2002- 2009 of 21%. Price increases in the sample of brands shown demonstrate and average increase of 43.8%; constantly twice the rate of inflation.

Duty on a pint of beer increased by 7p from 29p to 36p (24%) in the same period.

The unreformed tie also harms entrepreneurship, creates artificial barriers to market access by preventing Britain's growing numbers of small craft beer and cider producers from selling their products in tens of thousands of pubs. Athough the SIBA DDS scheme allows limited access into some pub estates for brewers, cider producers currently experiencing something of a renaissance enjoy no such access. These are British entrepreneurs, in an entrepreneurial sector where the rate of growth and diversity in the British brewing industry, particularly among craft producers, has been spectacular, but has principally been fuelled by the free-of-trade sector and is at risk of being stifled by the state of the tied trade.

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.

The issue here is really one of defining the terms. Certainly this should form part of good practice and if recession were to grip, for example; or if drink prices were to be inflated, the provision should be included in the Statutory Code.

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.

This is an important point on which I strongly agree: it is essential (see also answer to q11 below). One of the most frequent complaints of licensees is that the costs are hidden, or worse, deliberately obscured in negotiating a lease.

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

I support this option as there is evidence this particular tie functions to disincentivise tenants from making use of space within the pubs given the take-up of most profits by pubcos through the gaming machine tie. However, this is a secondary issue to the beer tie.

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

This should certainly be offered to all pubs that want to take it up. It would be a significant step forward in terms of consumer choice; but it is important that the guest beer option be free of the tie. This would provide an added element of competition to the pubco as wholesaler, to ensure their trade prices per barrel were at a fair market value.

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.

This is an important point; but that does not mean that the suppliers of beer flow monitoring equipment should suffer as a result.

There is potential for use of beer flow monitoring data by licensees, to check whether beer containers are filled as claimed by brewers, or whether there is wastage by serving beer over-conditioned, leakage in dispense equipment or staff pilfering. However, over ten years, the landlords of the . . report they "always found that it was very difficult to access the data in any useful form and what it chiefly told us was that any data obtained by our wonderful pubco was wildly inaccurate, particularly without any physical stock-taking associated with the process. At one stage the equipment reported we were buying much more beer than we were dispensing. With the ruinously expensive tied prices charged by said wonderful pubco, we couldn't have offloaded the beer ANYWHERE! The way monitoring

equipment is used essentially constitutes evidence in a kangaroo court controlled by the pubcos who can ruin a licensee before they can get legal help to fight back."

***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?**

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

Yes: indeed, and it is essential if reform is to be lasting and genuine, and to uphold the principle that a tied tenant should be no worse off than a free-of-tie tenant. Two Admiral pubs in have negotiated for such an option. One was granted it but only at the cost of more than doubling the rent (in the process, I am told, turning the pub from making a £400 loss a week to a £1,200 profit). The other made a similar offer but had it turned down flat with no attempt at negotiation by the pubco.

It is essential that licensees are able to request an open market rent review, with redress to the Independent Adjudicator if this is not performed by the pub company in a fair and competent manner. The evidence from the two Admiral pubs in ..... sets out clearly why this is right.

***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. The model of the Groceries Code Adjudicator would appear to set a robust and appropriate precedent.

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

i. Arbitrate individual disputes?

Yes, and make binding recommendations in the manner of an Ombudsman.

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

Yes, and this function should not be limited to companies owning over 500 pubs but should have a lower threshold; those companies such as genuine family brewers with fewer than 500 pubs (who should be exempt but must abide by a voluntary Code) should nonetheless be accountable for abiding by the Code.

***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, otherwise the role will not command the respect of pubcos or licensees. This should include the power to act as mediator of last resort in accordance with the principles of Alternative Dispute Resolution, and to declare invalid decisions of pubcos that are found to breach the

Code. These should include the ability to make recommendations regarding the application of the Code; make formal recommendations to the Secretary of State to apply the Code beyond a *de minimis* level in law; and issue enforceable directions on matters covered in question 8 above as well as the ability to require an open market rent review in cases of dispute.

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

Yes. Breaches of the code should be notifiable for the sake of potential industry entrants who do not want to be going into business with an abusive lessor.

III. Financial penalties?

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

***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?**

There is a sense of justice in the proposition that the Adjudicator should not be funded by those parts of the industry that do not breach the Code.

Finally, I wanted to share the story sent to me by a publican in who does not want his identity to be made known for understandable reasons. The story is self-explanatory.

just wanted to share my anger and seek some help. so here is what i am up against.

i bought the previous owners ran it into the ground and we took their £80,000 final year total to 300,000 in our first year. in order to do this we redecorated, carpeted and refurnished and they repaid us by increasing the rent due to the retail price index increase to £44,000.

the previous lease holders agreed with enterprise that the rent would no longer be upwards only but could be reduced on consideration of installing brew lines which monitor every drip of alcohol that we dispense from the beer pumps in spite of numerous meetings with the area manager at that time and his boss. they are obviously not prepared to honour that commitment. the area manager was not prepared to negotiate a rent reduction and his replacement has also failed to bring the rent down to a significant level. i have since come across XX who is the only person who has been prepared to offer me help and support. i have sent him figures from which he has been able to access what the rent should be. his initial response was that my rent should be no more than 20,600 and he has subsequently referred me to a chartered surveyor and former publican who has given me his opinion, based on what a prospective purchaser would have to pay if he were to come into an empty pub. he is highly respected in his field and has taken to court on numerous occasions. his findings were initially that my rent should be no more than 15,000 enterprise have recently increased my rent in line with the retail price index increase to a staggering 45,000. i was forced to put the pub on the market before christmas and to date have a prospective buyer who will not pay the asking price and will take the pub for a reduced price to include fixtures and fittings and good will.

have responded by sending a surveyor at a cost of 350 +vat to inspect the pub for

dilapidation's. i questioned the fact that i was being charged but was told that this was part of the agreement. i was angry, having restored the building to its former glory, bearing in mind that it had not been maintained in possibly as many as 25 years but should have been maintained and decorated every 4 years. iv done this work myself including cutting out rotten wood and changing colour to enhance its appearance. this has been done at my expense. as you would probably expect , has at no time offered any financial assistance in maintaining this building. however whilst the surveyor (who was a former carpenter) who i do not believe is qualified as a surveyor, conducted his survey, a letter arrived from informing me that they intended to send another surveyor to inspect the building and when they phoned to confirm the appointment they advised me that their services were free of charge. i questioned the fact that the letter confirming the appointment arrived whilst the other "surveyor" carried out his report and asked them whu it was that i was being charged 350 vat for the same service if theirs was for free why a second survey of the same nature was necessary. they postponed the survey and referred the matter to the regional manager who has not responded. i have also not received a copy of the findings of the first survey report so how can i possibly address any of the issues raised. the regional manager is aware that due to his vexatious manor telling me that the assignment could not take place until the rent had been agreed. the sale has been delayed for many weeks in spite of the fact that were obliged to agree the new rent level in march 2012 and have therefore breached their code of practice. they have also dodged the issue of monthly rent being unsustainable, by taking rent on a weekly basis. how can that possibly resolve the situation. they have also told my prospective buyer that he has to submit a business plan to include with the retail price of beers and lagers. however they refused to supply him with their wholesale price of beers, because it transpires that they charge different prices to different pubs (surely this is illegal?) they have also issued me with a list of certificates that they require prior to assignment of the lease many of which were not presented to me at the time of my take over and they are demanding 10% of the sale price as a guarantee against the purchaser going into receivership. surely his 10,000 deposit and his business plan that they have signed off are significant proof that he has every intention of making this business a success this is yet another example of attempt to make this-another pub- appear to be an un viable business, in order to get change of usage from the council to convert the pub into either residential accommodation or to demolish the building as the site is more valuable as a building plot.
i am aware that is intent upon making his pubs appear un viable in order that he can get change of usage. so that he can reduce outstanding debt to a more acceptable level. i understand that currently is in debt to the banks in the region of 4billion whereas their entire estate is worth only a 3rd of their total borrowings. the banks have instructed them to sell off 2/3s of their estate but this will not repay their debt. i am also aware that whilst they are selling many of their properties in the south of england they are using the funds to buy new properties in the midlands which they are paying to refurbish. why? and are the banks aware of what they are up to. prince charles personal secretary informed me that whilst he was sympathetic, he was unable to get involved in political issues however, having written to him it would appear that he has gone through the back door of parliament and told them to act, as many of the mps who were not interested have since done a complete u turn. my local mp YYY has succeeded in getting the matter debated in parliament and, initially, legislation was underway to introduce fair rent reviews and fair beer pricing. the chancellor of the exchequer intervened by trying to vito the legislation, saying that it complicated tax issues. in actual fact as had donated substantial amounts to the conservative party they expected the favour to be returned. this motion was later overturned and legislation will continue. however, has vowed to take the matter to the high court to contest the judgement and therefore delay the introduction of fair rent reviews and fair beer pricing. by the time legislation is passed i believe that most lease holders tied to pub companies will cease to exist. if this happens where will the government get the revenue as the

publicans will be unable to collect revenue on alcohol and tax subsequently national insurance contributions. i have accumulated huge debts purely by hard work and enthusiasm i am told by my customers that this pub has not worked this well in 35 years. if you take the pub company- out of the equation that statement could be true.
as are aware of my intent to sell they have suggested that arbitration through the pirrs scheme will take at least 6 months which will prolong the sale. they have suggested that the prospective buyer takes on the lease at an existing 45,000 rent and then negotiates a reduction, which will deprive me of my rent rebate from march 2012 and prolong the agreed rent review from that date.