



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:

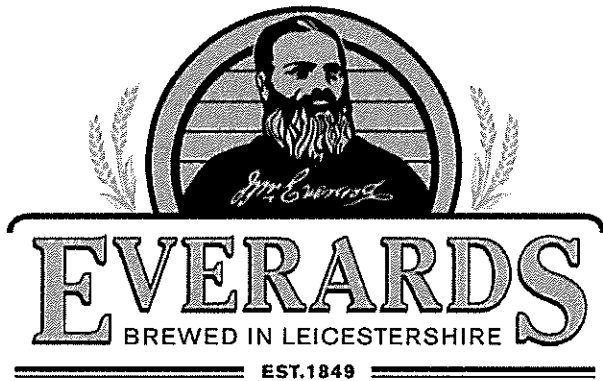
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Please tick one box from a list of options that best describes you as a respondent. This will enable views to be presented by group type.	
Representative Organisation	
Trade Union	
Interest Group	
Small to Medium Enterprise	✓
Large Enterprise	
Local 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

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Stephen Gould
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PUB COMPANIES & TENANTS: A GOVERNMENT CONSULTATION

Introduction

Everards Brewery Ltd welcomes the opportunity to respond to this consultation. Established in 1849 and led today by our Chairman, Richard Everard DL OBE, we operate 179 pubs (of which 171 pubs are 3 year renewable tenancies) which are at the heart of the communities we serve and brew 35,000 barrels of beer per annum producing distinctive, regionally brewed cask beers ("real ale") and support regional and local suppliers through the use of locally sourced raw materials and services, employing around 110 people across our company.

While our brewery has been family owned and run for many generations, our business is dynamic and innovative, constantly developing new products and brands and investing in the local economy and creating jobs. In 2013 Everards will invest £3.5m in our pub estate creating over 90 jobs and are planning to invest a further £3m in 2014, creating over 75 jobs.

171 of our 179 pubs are 3 year but renewable tenancies, a long established business model, which offer a partnership between the pub-owning brewer, supplying beer and looking after the property, and the tenant who manages the retail business. The remaining pubs are longer leases. We maintain, repair and improve our pub properties at our own cost, taking a long term view of that investment.

Everards Brewery rejects in the strongest terms the central assumption in the Consultation Document that the current challenges experienced by tied tenants are almost solely the result of what has been referred to as "landlords' exploitative financial practices."

We are very concerned that the introduction of a Statutory Code risks further costs and regulatory burden to an industry already beset with heavy taxation and compliance costs. We firmly believe if the Statutory Code Proposals as drafted are introduced we would be forced to change the way we operate the tied model. This we believe would result in reduced investment, reduced support, a reduction in Capital employed and ultimately a number of job losses both at pub and brewery level.

Industry self-regulation is working, all of the main and truly representative bodies including the ALMR are now party to the Industry Framework Code 6 (IFC) and we believe there is no need for change as under our own proposals we will review the Framework Code every 3 years.

We are very proud of the open, transparent and progressive relationship we have with our Tenants. This was borne out in an independent survey which 144 of our Tenants participated in 2012, the key findings of which were:-

- 88% of Tenants are 'happy' or 'very happy' with Everards Brewery
- 95% feel well prepared to run their business successfully
- 87% view their relationship with the Business Development Manager (BDM) positively
- BDM's are viewed as making a positive contribution to Tenant's businesses
- 91% feel that training offered is 'good' or 'very good'

We are members of the British Beer & Pub Association (BBPA) because it is the principle trade body for the brewing industry, as well as representing pub owning companies. We are aligned with the separate response from the BBPA to this consultation stating that self-regulation is low cost, effective, legally binding and is working for all parties.

Executive Summary

There have recently been four separate Select Committee enquiries into our industry and the beer tie, in 2004, 2009, 2010 and 2011. All have been aimed at the 'power of the pub companies' and specifically the long Fully Repairing and Insuring (FRI) leases, which have become common since the Beer Orders broke up the national brewers in 1991.

In response to the House of Commons Business, Innovation and Skills Committee's tenth report of session 2010-2011 into pub companies, the Government recognised (Nov 11) that, particularly in the case of the traditional tenancy model, the tie may play an important role in safeguarding the future of Britain's smaller breweries.

In that report it was concluded that the traditional brewery tenancy is fundamentally different to the longer term FRI lease market and should be governed separately, with a strengthened code of conduct.

The report acknowledged that the traditional tenancy model not only provides a low cost entry for a tenant wishing to run a pub but also offers a low cost/low risk exit, as neither the freehold nor the lease need to be sold on. Our key role in a competitive marketplace is to attract and retain top quality Tenants. If we don't operate fairly or support professionally, those Tenants can give notice and leave in no more than 6 months. Long term sustainable relationships is in everyone's interest. In addition, the fact that the costs of property – repair, insurance, maintenance and improvements – are borne by Everards Brewery significantly reduces the risk profile. Long term decisions about the property can be made without short term risk to the tenant.

It is the closer working relationship with our tenants and lessees that set us apart. Our success is totally governed by our tenants' success and it is in our interest to make sure we listen carefully when a problem arises. We therefore believe the 500 cut off figure proposed in the legislation to be paramount to us being able to continue running our businesses in the way we and our tenants have been accustomed by way of the traditional tenancy.

Special Commercial or Financial Advantages (SCORFA)

At the heart of a traditional tenancy is a unique interdependency, whereby both parties to the tied agreement rely on each other to ensure that the outcome of the agreement is profitable. The traditional tenancy differs from a commercial lease, as the landlord of the premises has an active role in the successful outcome of the business. SCORFA (Special Commercial or Financial Advantages) illustrates the financial element of the landlord's input to the traditional tenanted partnership. SCORFA benefits can be grouped within 4 main categories as below:

1. **Rent:** Traditional tied tenanted rents are substantially lower than free of tie lease rents.

As enshrined in Version 6 of the Code, traditional tenancies are not subject to UORR (upwards only rent review), which is a standard feature of a commercial lease.

Version 6 of the Code also ensures that rent can be rebased in the event of a material change of circumstance adversely impacting on the Fair Maintainable Trade of a tenanted house. This safety mechanism is not found in commercial leases.

2. Property Risk: Everards Brewery bears such costs as:

- Building Insurance which the commercial landlord will charge on as insurance rent.
- Maintaining the structure of the premises.
- Maintaining the infrastructure of the premises including gas / water piping and electric wiring.
- Decorating the exterior of the premises including the supply of signage.

3. Retail Involvement: We are actively involved in supporting all our Tenants. This will involve the provision of training, together with operational support, involving the main elements of the business:

- Business advice
- Development advice
- Cellar Services
- Beer quality / presentation
- Wine ranging and marketing
- Advice on food business / menus
- Procurement across numerous aspects of the business
- Marketing support
- Digital marketing
- Property rates service

Everards Brewery were very proud to be recognised as the Best Tenanted/Leased Pub Company (up to 200 sites) at the 2013 Publican Awards. The Judges commented "Everards Brewery demonstrated that the comprehensive package of support the company provides its tenants was backed up by a personal, innovative and flexible approach to growing its business for the benefit of both itself and, most importantly, its Tenants. It has a consistent and considered approach. This is a core strength of the group, underlined by its work through its new Quarterly Business Review (QBR) scheme, which it introduced last

year, for Tenants in their first 12 months in the sector. The Tenant's business plan is reviewed at the session as well as their progress with training and marketing recommendations. Any issues can be raised and opportunities, such as potential development plans identified and discussed."

4. **Capital Investment:** We invest substantially in the development and maintenance of traditional tenanted premises, as opposed to the commercial landlord. This varies from building extensions to new kitchens.

In April 2013, the IFBB (of which Everards Brewery are members) commissioned a leading firm of international accountants (Ernst & Young) to independently validate the value of SCORFA provided to tenants by member companies. Member companies provide different levels of support, as would be expected in a highly competitive market. Nevertheless, there is sufficient compatibility to generate robust indicative values under the headings above. These benefits can only be accurately measured over the life of the tenancy, as on an individual basis they will vary from year to year depending on the timing of investment or major repair.

The Industry Framework Code (IFC)

We believe that the IFC provides a strong platform for self-regulation in the industry, with common ground among pub owning companies and operators.

The intention of the IFC is to provide a framework for open and transparent business transactions. We believe we have a better system of regulation than previously. Rent setting systems, for example the shadow P&L, have been reviewed and improved.

Furthermore, the emphasis on the differences between FRI long leases and brewery tenancies has allowed us to highlight the long established benefits which we were not previously making the most of. Potential tenants and newcomers to the trade can now be made more aware of the extensive support offered by Everards Brewery to our tenants.

A Statutory Code

The Government says it is committed to a free market, and to reducing the amount of Red Tape. If that is the case why are the Government now considering yet more legislation

without a detailed investigation into the allegations of unfairness, particularly since the voluntary code that was requested by the BIS Committee has now been put into place following a lot of hard work and cooperation within the industry?

The situation that the Government Consultation is seeking to change was caused by the Government's last major interference into our industry with the Beer Orders of 1989. The law of unforeseen and poorly thought through consequences is in all likelihood to be repeated.

In the past ten years we have been further subjected to five enquiries and two OFT reports. In each and every case the fundamental principle of the tied business model for public houses has been supported both in the UK and in Europe through the 'Block Exemption'.

We currently operate below the threshold proposed of 500 pubs. However it is proposed that the Secretary of State be allowed to amend that level and that is a serious concern to us. We firmly believe that any alteration to the threshold should only ever be carried out through a Parliamentary Bill or equivalent and not on the whim of the Secretary of State.

If any terms of a new statutory code, for example a free of tie option or a guest beer provision, were suddenly to become a right for tenants at a lower threshold, say 200 pubs, it would have devastating consequences for our business.

There seems little to be said for increasing regulation, with more legislation, at a time when the Government is committed to reducing 'red tape'. As recently as November 2011 the Government's own report to DBIS said that there were no competition issues with the market (two OFT enquiries) and that the debate over 'free of tie' or 'tie' was 'a distraction'.

We do not believe that a Statutory Code underpinned by a newly formed regulator is a necessary or appropriate way forward. The impact assessment is wholly unsatisfactory. The additional regulatory burden, adds very significant costs to the pub sector and potentially has hugely damaging consequences in terms of additional pub closures, business failure and reduced consumer choice.

The current rate of pub closures stands at 26 per week. Historically the trend shows that free of tie pubs are more likely to close than tied pubs, as recognised by the impact assessment which highlights a 5% closure rate for free of tie pubs between 2010 and 2012, compared to a 3.4% rate for tied pubs. The recent duty reduction on beer was a hugely welcome step for which the Chancellor was rightly applauded. However, failure to recognise the resilience and advantages of the tied pub model in difficult economic times such as these and the consequences of many of the proposals in relation to the Statutory Code is in danger of undermining this boost and are clearly counter to the Government's own deregulatory and growth agenda.

EVERARDS BREWERY LTD ANSWERS TO CONSULTATION QUESTIONS

Q.1 Should there be a Statutory Code?

Everards Brewery do not believe there is a need for a Statutory Code to be introduced even though the current proposal would mean we would not be under the sanctions of such a Code as we operate less than 500 pubs. We believe as we will spell out later in the questionnaire that the Statutory Regulations as drafted would have unintended consequences of distorting the free market place.

We participate fully in and support the working of both PIRRS (Pub Independent Rent Review Scheme) and PICAS (Pub Independent and Conciliation Service) and believe that self regulation is working.

The low cost of being able to take both rent and Code of Practice disputes to these bodies is not available in most other industries in this country. We insist all our applicants that do not have experience of the trade sit PEAT the pub entry training and we insist they take financial advice before signing one of our tenancies. Our SCORFA benefits (Special Commercial or Financial Advantages) some of which are listed above can be backed up by evidence which will be presented on behalf of IFBB Members in their reply to the consultation.

Version 6 of the Industry Framework Code has only recently been agreed and is now proceeding to the next stage where individual companies re-write their own Codes of Practice ready to be accredited by BIIBAS. We have played a major part in discussions with representatives of the BBPA, BII, ALMR and other parties and believe the latest version is a major step forward.

Whilst the consultation period does not require us under a Statutory Code to have or abide by Industry Framework Code 6 we have no intention of not abiding by its contents as we firmly believe it is a major move forward as stated above.

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 supporting evidence.

AND

Q.3 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?

We support a 500 leased/tenanted pub threshold, but only if this does not lead to a material distortion in competition above and below this threshold. The current proposals which abolish the machine tie and demands a guest beer be offered could as drafted materially distort competition between large and smaller companies with less than 500 houses.

Q.4 How do you consider that franchises should be treated under the Code?

We have no Franchised pubs in our Estate but do believe if operated under the British Franchise Association regulations they should not be included under the proposed Code.

Q.5 What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence.

We do not agree with the costs and benefits stated in the consultation document regarding the impact the proposals will have on the pub sector but will leave those Companies with more than 500 houses to make their own case as part of this consultation.

We do however believe the impact of statutory regulation will impact on smaller companies with less than 500 houses as we will still have to maintain PICAS and PIRRS as part of self-regulation. There will be far fewer pubs now under this self-regulatory banner with costs remaining similar which will result in a much greater burden on smaller companies.

Q.6 What are your views on the future of self-regulation within the industry?

We participate in and fully support self-regulation within the industry, which we believe has made great progress especially over the last year. We believe the system is working well and, if anything, will be stronger still following the approval earlier this year of Version 6 of the Code. We are also as part of our support committed to continuing with self-regulation despite being below the threshold of 500 pubs.

The new code includes the establishment of a new Regulatory Board to oversee the corporate governance of BIIBAS, which accredits all company codes, and the PIRRS and PICA-Service panels, which have already been successfully established and provide independent, low-cost arbitration services for rent and other disputes. This new Regulatory Board is in the process of being finalised and we fully support the formation of this new Board.

Q.7 Do you agree that the Code should be based on the following two core and overarching principles?

i. Principle of Fair and Lawful Dealing

We are totally committed to fair, transparent and lawful dealing with tenants and lessees and all other business partners.

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

We would first like to point out that we believe there is no such thing as a "Free of Tie" tenant whose Landlord bears the property risk without recharge to the tenant.

That said we fully support the proposal that a tied tenant should be no worse off than a free of tie tenant and believe that at Everards Brewery having taken into account the SCORFA benefits that this is the case.

However, we also make the point that every pub is different and that a one rule fits all scenario is impossible. We have also heard that proposals on the calculation of SCORFA should be at a given time. This method would totally distort the investment we make in our pubs over a longer time period. The renewal of a roof for instance is a major cost but only occurs every 25-40 years and will cost circa £30,000. Signage and re-decorations to our properties is made every 5-6 years and costs upward of £10,000.

Q.8 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

Agree.

- if the pub company significantly increases drink prices or if an event occurs outside the tenant's control.

We set out in our own Code when and how we can increase prices. This is normally annually, or when the wholesale price of the produce is increased significantly by a supplier.

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.

As stated above we would only agree to this if it reflects the life of a pub and not a given short period.

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

We do not agree.

We operate a tie on machines on a 50/50 split basis. We believe the tied system serves both tenant and company well in that we keep a close watch on the quality of machine, the income and the need to change or improve the machine as income slows.

We also believe that by only imposing free of tie on AWP machines on those companies with more than 500 pubs it will significantly distort the market place.

We have a real concern that removing the tie would lead to criminal behaviour by small independent suppliers and the Government would seriously reduce income as control over taxation and the collection of such would become unregulated.

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

We do not agree.

The history of a Company like Everards Brewery purchasing local pubs to sell their own brands of ales means we will always be against the provision of a 'guest beer' option across the entire estate. We do provide through our brewery the option to purchase guest ales. In fact over the last 12 months we have offered over 50 different beers from 30 different breweries to our tenants.

We would also point out that although we are not within the number of 500 outlets as proposed in the consultation document if the proposals are carried forward we believe the guest ale rule will once again distort the market place.

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

Do not agree. There is no evidence presented in the consultation as to why flow monitoring equipment should not be used as part of the process to determine if a tenant is not complying with purchasing obligations.

Our Code states that flow monitoring equipment cannot solely be used as evidence that a breach of contract has occurred.

Q.9 Are there any areas where you consider the draft Statutory Code (at Annex A) should be altered?

We will leave this area to the larger companies and the BBPA to comment.

Q.10 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?

We are committed to reviewing the self-regulatory system and have suggested this should be on a on a three yearly basis.

Q.11. Should the Government include a mandatory free of tie option in the Statutory Code?

Imposition of a mandatory free of tie option would destroy the basis of the traditional tenancies we run at Everards Brewery which is the pillar of local communities and provides a low cost and low risk of entry to the licensed trade.

Q.12 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.

Q.13 Should the Government appoint an independent Adjudicator to enforce the new Statutory Code?

Under the IFC, PICA-Service already provides an independent conciliation and arbitration service for complaints around company conduct, and PIRRS for rent reviews which we believe is perfectly adequate.

Q.14 Do you agree that the Adjudicator should be able to:

(i) Arbitrate individual disputes?

We believe there are already a number of services that are available to tenants to arbitrate disputes:

- PICA-Service (disputes relating to breaches of the IFC)
- PIRRS (disputes relating to rent reviews)
- Via the court system over contractual disputes
- Other established arbitration bodies (ACAS)

And that no further regulation is required.

(ii) Carry out investigations into widespread breaches of the code?

Investigations into breaches of the Code would have to be based on sound evidence, and specify where exactly the Code has been breached. Systems will need to be in place to prevent a large number of speculative complaints being sent for adjudication.

Q.15 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

(ii) Requirement to publish information ('name and shame')

(iii) Financial penalties

The consultation contains no detail of appeals process for companies, recourse to such a system should be in place to prevent unfair decisions being reached.

Q.16 Do you consider the Government's proposals for reporting and review of the Adjudicator are satisfactory?

Yes.

Q. 17 Do you agree that the Adjudicator should be funded by an industry levy, with companies who breach the Code paying a proportionally 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?

The Levy as proposed will be paid by pub companies covered by the Code. In second and subsequent years of the levy, it is suggested that those who breach the Code pay more which we do not disagree with.