



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	Yes
Large Enterprise	
Local Government	
Central Government	
Legal	
Academic	
Other (please describe): A small pub owning company) managing three pubs; one Punch, one Enterprise and one free of tie private lease. In the past we have owned two other large pub company leases and two other free of tie pubs	

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. 200 pubs would be more appropriate**
- 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? Yes**
- 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 consumer's retail pricing would be very much more equal across all the pub estate than at present. Reason is that pub operators would be dealing with an level playing field of the rent:beer purchase price/discount mix. Our free of tie pub () in has lower selling prices than our Enterprise pub () but achieves 12% higher gross profit. Our Punch pub () with very similar prices to [F&T pub] produces 4% less gross profit. The products purchased are VERY similar i.e. chiefly Heineken UK brands. This disparity obviously adversely effects profitability. The three pubs rent payable does not reflect the difference in discounts, despite the Enterprise pub gaining a 20% rent reduction in**
- Q6. What are your views on the future of self-regulation within the industry? They have tried hard to improve and I think Punch have done so in the past 8 years. Enterprise still have the ethos of disregarding the needs of the tenant if they can and tie themselves up in their own red tape to try and prove that they are being fair. Net result is that they waste our management time with fruitless pieces of paper that they "have" to get us to sign**
- 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**
 - 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, not intrinsically. A deal is a deal and if the incoming**

tenant accepts that he should adapt his business plan accordingly. This principle could be applied to beer pricing but there is too much disparity for that to be valid. However, I do believe that in the past the pub company's management and control of gaming machines has also benefited the tenant, albeit having to share it

- iv. ***Provide a 'guest beer' option in all tied pubs.*** Yes, in principle but it is fair enough to say that this may be at the expense of a higher rent, so it should be offered as an option.
- 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. If a tenant has signed a contract, which involves a purchasing obligation, then I see no reason why he should object to the supplier looking for proof that he is sticking to the deal. An honest tenant does not have anything to hide and the information is also useful to him. Whether inequitable or not under the current regime I believe that tenants should stick to their contract and get on with running their business rather than running around getting beer from illicit sources.

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? Yes, of course a Code needs review. HOWEVER, this is all at the GREAT risk that the civil servant bureaucratic mind takes over and over regulates the industry

Q11. Should the Government include a mandatory free-of-tie option in the Statutory Code? Yes, why not?

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? Yes. One of the key issues I have is in the level of discounting that is offered by pub companies.

Firstly, their legal agreements are wonderfully loose about the actual level of discounting that they are obliged to offer. Our leases rely upon "published" wholesale prices and no definition on how the level of discount is calculated.

Secondly, their scales of discount do not rise in proportion to the wholesale price. So, every year the brewers increase their prices and the pub companies pass on the total wholesale increase and sometimes offer a small improvement in discount; the mechanism they use is totally opaque, with no explanation. In the free of tie outlet if the price increases by 5% then our discount also increases by 5%. This, over time, has an increasingly large effect upon the prices the tenant has to charge his consumers.

Q13. Should the Government appoint an independent Adjudicator to enforce the new Statutory Code? Probably but with the same proviso about resulting in appalling

levels of bureaucracy, which can only hamper the tenant in running his company or force him into employing expensive professionals to try to unravel the red tape.

Q14. Do you agree that the Adjudicator should be able to: Probably – as above

i. Arbitrate individual disputes?

ii. Carry out investigations into widespread breaches of 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: Probably – as above

I. Recommendations?

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

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?