

Pub companies and tenants - A government consultation

Response form

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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): Licensee

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.

However the introduction of a statutory code can only be effective if it actually addresses the vital issue of the share of profit between tenant and landlord. The current IFC V6 fails to address the issue of risk and reward and a statutory code based on IFC written by the Pub companies themselves will only serve to further exaggerate the imbalance of power that currently exists.

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.

Yes.

However it is important that the Government consider a scenario in which large pub companies attempt to split their companies into smaller entities with the intention of avoiding statutory legislation.

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 purpose of the introduction of a statutory code is to ensure fairness across the pub industry and it is likely that pub companies will attempt to alter agreements if the code specifies particular types of agreements by using terms such as 'Managed Tenancy'.

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

If franchise agreements have purchasing obligations attached to them, then they should be covered by all aspects of the statutory code to ensure the 'franchisee' is treated fairly; hence my support of the question 3 and the principle that all non-managed agreements should be covered.

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

Share of profit

Fundamentally there will be a shift in the share of profit from landlord to tenant. Our own situation shows our pub company are taking more from the business through dry and wet rent than is sustainable. Our turnover for the previous year was approximately £1.2m net of VAT paying a dry rent of £150,000 (12.5% turnover). Add to this the cost of the tie to us, which we can show that based on purchases of 1000 brewers barrels we could have easily achieved "discounts" of around £180, this cost (wet rent) is approximately £180,000. So based on a conservative estimate of discounts available our pub company they receive £100,000 in

rent. According to ALMR benchmarking figures free of tie rents are on average are 10.7% of turnover in our case that would be circa so it is easy to demonstrate that the combination of dry and wet rent leaves us around £40k worse off than if we were free of tie.

Choice of Products

Our pub company boasts an extensive Brand Portfolio although the reality is much of the market is foreclosed as many brewers cannot get their products listed. We have access to 98 cask ales currently on the Enterprise Inns price list with 52 SIBA delivered products a total of 150 products. A present there are over 3000 cask beers being brewed in the UK which means we have access to less than 5% of the total cask ale market. The tied price list only has a very limited choice from any brewer. For example, among the SIBA brewers we only have access to a maximum of 3 of their products although many of the brewers have a large selection not available to tied pubs. This is a pattern that is seen consistently across the sector among brewers, severely limiting our opportunity to trial new products especially seasonal beers.

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

I Believe self-regulation has already been given opportunity to work and has failed therefore I feel it has no future in the pub industry

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.*

YES

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

YES

- 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.***

YES, and any flow motoring equipment should be considered for use in trade and covered by weights and measures legislation.

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

YES, Must contain provision for a Market Rent Only Option

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

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?

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

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?

Yes, all stakeholders should contribute to the adjudicator