



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
Large Enterprise
Local Government
Central Government
Legal
Academic
Other (please describe): Shepherd Neame- tenant.

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.

It should include all pub owning companies no matter how small.

The very small brewers reputedly have a very good relationship with their tenants which I would include the likes of Harveys of Sussex, Palmers and Batemans who own only a few dozen pubs are likely to be un-affected as they still have truly 'local' and traditional connection with their pubs and tenants. However as soon as the brewers get involved with the supermarket supply chain the natural protection of their own pubs is abandoned in the drive to increase sales to the off trade to the detriment of their own tied pubs.

Shepherd Neame is a very good example of this and their practices are no different to the pubcos.

If there is a ceiling it would be better set at 100 pubs. The true regionals with a local focus will exceed any requirements. The larger regionals that are now operating more akin to the 'pubco' model will have to re-address their tenant relationship or risk losing 'good tenants' moving albeit reluctantly into new regulated 'pubco' deals. Which will hopefully, following regulation, offer a far more equitable share of pubs potential than is generally currently available to traditional larger regional brewer tenants.

Our pub is an honest and popular community local. It has no trade kitchen or any other income streams besides the sale of drinks. We have been tenants here since 2005.

Our pub trade May 2012- Apr 2013 ex VAT (rounded to £100)

Wet Sales	£
Machine, pool table, Jukebox income after all deductions	£

Cost of sales	£
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NETT Income	£
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Total running costs including 2x weekly live music Rent, staff, heating etc. etc.	
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Leaving my wife and I with a joint income of	£9100
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(Our rent including 'sevice charges' etc : ex VAT)

The interior of our pub is in good order which was all decorated re-furnished our gardens landscaped by ourselves before the recession took effect and our income was hit by increasing drinks prices and the rise in all other fixed costs.

The exterior of the pub has not been decorated by the brewery in at least 9 years and has looked in a sad state for the past five years or so. Repairs are rarely carried out by the brewery in pre-recession trading conditions we often undertook the repairs ourselves at our own expense rather than have the embarrassment of having items in a damaged state.

A few comment on the Shepherd Neame code of practice.

Property Sevices. *We've not seen our allocated surveyor in over three years. Repairs are hard to initiate and never checked. General state of brewery commitments to the exterior of the pub are appalling and have not been touched in at least nine years.*

Web to print; *It vanished a couple of years ago.*

Licensees Forum *Never held nor promoted*

BDM visits *Almost as rare as chicken's teeth and then almost only ever when requested by ourselves. Input from BDM just about zilch.*

The rent review process is very near 'take it or leave it' there are never any form of calculations produced by the brewery to attempt to justify rent levels. This matter seriously need addressing and sooner rather than later.

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?

This is not an area I have any knowledge of its mode of operation.

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

Aside from myself I know a number of tenants, both pubco and Shepherd Neame that are living hand to mouth. While I obviously have a vested interest being a publican, I can't help fearing that as I approach my 50 year. Unless there is a drastic change in the way our pubs are operated rapidly they will become a thing of the past within my lifetime.

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

So far there has been minimal impact with the possible exception of an increase of traditional tenancies being offered by the larger pubcos following the lessees handing keys back on un-assignable leases.

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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 most certainly

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

The risks are very similar so not unreasonable to consider that to be a good basis.

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- I would extend that exclusively to AWP's and limit the tie to draught beer and cider only

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

Yes; except for the very smallest regional and local brewers. As soon as a major percentage of their income is from supermarkets and the off trade they should have to offer their tenants a true guest beer beyond the tie. Since the Beer Orders customers have come to expect to see a good selection of drinks aside from the very small brewers who are arguably 'pleasantly quirky' in the offering the larger estates are server disadvantaged in only having a limited offering.

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

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

No- However I see no reason why tenants of pubcos and brewers with less than 500 pubs should escape this clear presentation of the estimates behind their proposed rent offer.

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 or it would prevent similar unintended consequences distorting the trade as happened following the Beer Orders.

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

I feel that all estates above the tenanted 500 houses should have a free of tie option. Aside from the very small regionals the tie should have an option for free of tie other than draught beers and lagers only.

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

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

i. Arbitrate individual disputes?

Essential to prevent stalemates

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?

Dependant on the severity of the breach

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?

Pub tenants and consumers must be ringfenced from the costs of the levy.
