



## 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](mailto: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): Tied Lessee

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.**

No, I think that companies have already begun to divide/reduce their holdings to avoid compliance. The current rate of closures also reduces the holdings and I am concerned that there could be considerable differences between a 499 pub company and a 501 company.

**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?**

I have no experience of franchise pub operations, however a comparison with branded franchises (Coffee, Burgers, Sandwiches) one would expect the supply chain to be tightly controlled (tied) to maintain the brand image/quality/integrity but would not expect the same branded product to be available to buy and sell considerably cheaper in an independent outlet next door.

**Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence. As a tied tenant of Star (Heineken) our net profit before tax has been less than £10k for the last 3 years, on an average T/O of £150k. This is split between Star and I working about 60 hrs per week each. Our rent is £10k. Rateable Value £10k and our tied spend with Heineken is £10k. My view is that overpricing of tied products and excessive rent has taken £10k from my bottom line. An income of £50k for a couple would be more reasonable. The Heineken mark-up to its tenants seems excessive when I am effectively buying direct from the manufacturer. My local wine merchant advertises identical Heineken products at circa 30% less (they must also make a profit). Similarly Heineken brands (Kronenbourg, Fosters, Strongbow, Bulmers etc) are most prominent in the supermarkets sold at retail for less than 50% of the wholesale price that I pay. When signing the lease there was a prevailing price list with a discount system in £/barrel (not a percentage). That price list has been increased dramatically in 5 years, whereas the discounts remain the same (effectively reducing the discount as a percentage). Meanwhile the price of a supermarket pack has remained the same or less. I do not believe that the issue is the tie itself, but a combination of high rent and tied pricing. If tied pricing were competitive lessees would want to be tied to their best supplier.**

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

Successful self-regulation would remove the need for legislation. Had self-regulation improved the industry the current consultation would not be necessary. All codes of practice I have seen specifically omit the second principle in Q7

**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, of course.

- 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. In my experience the Pubco conducts an internal Rent Review without disclosing the calculations used. This is not an "open market" review and therefore most tenants would be due one immediately. I understand that the VOA Rateable Value represents the open market rent based on trade levels. Using this as a base review immediately to regulate rents would start the process and levels over or under the RV could be appealed/negotiated going forward.
- 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. This is a particularly unfair tie.
- iv. *Provide a 'guest beer' option in all tied pubs.* Yes. This should include cider options. We are a Pub but have no access to local products. There is not a single product in the Pub simply because there is not one on our tied list. The product range is manipulated by pricing.
- 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? Can we assume it will apply to existing leases and not just new ones?**

**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, balanced with a market rent.**

**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? I think the tied pricing is more significant than the tie itself. Fixed and reasonable rents would be acceptable if tied pricing was competitive.**

**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? 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 and compensation.***

**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. More compliant companies, with less cases referred would have minimum impact.**