



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): Tenant with full wet tie

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, it is clear that self regulation rarely works due to the requirement of companies to maximise their profits

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.

I see the argument for the threshold but also see weaknesses. All the pub companies are in the same business so regulation should be across the board, excluding smaller companies from the code may encourage abuses as it may give them an advantage over the bigger companies. Companies that fall below the threshold are still substantial businesses, the company I am tenanted to have over 350 pubs and hotels, they are just as capable of abuse as a bigger 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 for the reasons given above.

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

I don't feel I am qualified to answer that

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

Pub companies maximise profits with little thought to the long term sustainability of the pub sector. A better deal for tenants will result in better quality tenants that will have a vested interest in running a profitable and safe pub. If a pub company sets a rent on a pub that prospective tenants consider to high then they will not get any tenants. The pub company may then reduce the rent, or as often happens decide the business is not profitable enough and redevelop the site. Many small but potentially still profitable pubs have been lost in this way. Being free of tie also promotes consumer choice. However being free of tie will result in higher rents as the pubcos and brewers will still be trying to maximise their profits this will push the price the consumer pays up. The big companies have lost the principle of some profit for us and some profit for you. It has been replaced by maximum profit for us and the minimum we think that you will accept as a tenant for you.

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

There shouldn't be a future for self regulation

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

Of course, businesses of all sizes should be fair and lawful

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

Yes but how do we get the pubcos and brewers to set rents/drinks prices that allow tied or untied tenants to earn a reasonable living?

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.

According to my contract I have that right but the contract also states that if the recommendation is for a decrease the brewery will ignore it. It also states that the rent can only ever go up. It is all well and good giving a tenant the right to a review but what is needed is a code that says the pubco must abide by that review.

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.

The brewery I am with provided a business plan template and advice so I was able to get a good idea of what I could expect to make. This was applicable only to the pub I was applying for obviously. It may be difficult to produce a meaningful comparison. It would be interesting to see what the margins are on the drinks supplied to tied tenants.

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

Yes, allowing the pubco to grab a slice of anything the tenant attempts to boost profits stifles innovation.

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

Yes especially with ales as a big part of our flourishing real ale industry is variety and customer choice.

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.

I have no experience of the use of such equipment

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

No, nice to see my concerns addressed in Q8 i have already been considered though.

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, attempts to circumvent certain provisions by the pubcos should also be looked for. Tenants should be consulted as to whether they are seeing any benefit as well as looking for consumer benefits.

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

I think there should be at least a reduced tie option. Pubcos are simply selling other people's products for a profit. Brewers are actually providing retail outlets for their products so a tie that includes a limited beer tie would not be unfair provided the tenant could source all other drinks and some beer independently. Some brewers are saturating areas with their own pubs, squeezing out competition and reducing choice and value for money for the consumer. This means they are not only dictating what people drink but how much they pay for it. I know that it is outside the remit of this consultation but it is worth remembering that it doesn't need a 100% monopoly to exploit the consumer (look at oil and gas!)

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?

Possibly by a profit share scheme where the tenant is guaranteed a percentage of the profits produced by the pub. Currently good tenants are penalised for running good pubs. If the barrelage increases or a good food sideline is developed then the next rent review will see a jump in the rent. There is little incentive for a tenant to put the work in to expand the business when most of the profit generated by their effort is swallowed up by the pubco/brewery.

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

I believe so

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

i. Arbitrate individual disputes?

ii. Carry out investigations into widespread breaches of the Code?

Yes to both of the above

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?

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

III. Financial penalties?

Yes unfortunately big companies respond only to direct action that impacts their profitability. Small traders absolutely depend on their good reputation and value it accordingly, big companies are thicker skinned.

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?

I would be happy to pay a small levy if it guaranteed that I would see the rewards of my own hard work fairly distributed between myself and the company that has given me that opportunity. If this is done well tenants and the consumer should benefit. The big companies may see a drop in their profits due to a levy. However if these profits have been gained through unfair means that disadvantage small businesses and the consumer then they should not have enjoyed them in the first place. As well as using the levy as a punishment reductions could also be used as an incentive.