



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	<input checked="" type="checkbox"/>
Small to Medium Enterprise	<input checked="" type="checkbox"/>
Large Enterprise	
Local Government	
Central Government	
Legal	
Academic	
Other (please describe):	pub 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. Yes**
- 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?
It must mention that all agreements for franchise must be reasonable and fair. They must adhere to all legal requirements**
- Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence.
Lower reasonable rents would enable a tied licensee to earn an income, higher than the levels recently quoted by CAMRA. Any earning, indicated by the Impact Assessment would be beneficial and would enable the licensee to "invest" money in improvements in training and staffing, which would lead to increased profitability and help stop the closure of struggling pubs**
- Q6. What are your views on the future of self-regulation within the industry?
Self-regulation cannot work, and obviously has not worked, within private enterprise, when parties have billion pound debts. Self-Regulatory Boards in a 'tied' failing business model are not fair and philanthropic in Britain. There is clear evidence of self-regulation, particularly regarding legal effect and application not working in the court system. The arbitration scheme has only heard 3 cases and is not embraced and trusted by tied tenants**
- 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

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

There must be an option for Market Rent Only – the licensee should be able to choose to remain tied (and so be more secure and realise greater benefits of living expenses as B Simmonds recently surmised) or pay a reasonable and fair market rent (independently legally agreed) and buy provisions elsewhere

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. Progress can often be hindered by stasis. Lack of reviews of the Beer Orders surely caused the formation of the present “zombie” pubco. Unfortunately some Companies seemed to find it easy to flout Government proposals. Those who determine rent are not independent and not properly regulated by RICS-one only has to look at their websites, to see their lists of clients!

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? As outlined in Q9 response

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. If these can all be done to Banks and other Businesses, why not the pub companies?

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? Yes

What, in your view, would be the impact of the levy on pub companies, pub tenants, consumers and the overall industry?

There should be greater or better liaison between Senior and Middle Management in the pub companies. Adjudicating costs may not be as high, as was suggested recently by the BPPA. Why should there be more complaints in a better-regulated industry? Everyone would benefit from more independence in the industry, which could lead to more balanced reporting of different issues in the media and more overall fairness in the industry, particularly regarding balance of power and the balance of risk and reward between these unequal parties