

## 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 - Yes - Lessee
Large Enterprise
Local Government
Central Government
Legal
Academic
Other (please describe):

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.

While some small companies are offering fair deals the 500 ceiling leaves Spirit with 400 pubs outside of legislation. Further, what is to stop pubcos selling freeholds of under-performing pubs to get below the ceiling?

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?  
The franchise offer Spirit are marketing gives an inordinate share of the profit to the pubco as under leases. They propose to take 18% of net take after vat and before any costs are met. I believe a fairer quota would be 10-12% While it is appreciated they are investing heavily in the business nearly all the risk is again taken by the tenant/franchisee.

Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence.  
The changes will increase customer choice and profitability for lessees leading to more pubs staying open. For the pubcos it may cause difficulties but as they are built on an unsustainable business model that used ebitda as a valuation of businesses they are the cause of many of the issues.

Q6. What are your views on the future of self-regulation within the industry?  
Unrepresentative of the majority of independent pub operators and the public in general.

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*

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.*

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.*

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

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

- 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 to all above

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

Only in respect of the 500 ceiling.

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?

A review after twelve to eighteen months would prove if the code was working effectively and delivering the intended benefits.

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?

By ensuring that current/recent and not historic barrelage figures are used when setting rents.

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

Yes. One with no previous vested interest in established industry organisations (BII, etc)

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

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 to all.

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?

Adjudicator should be government funded from its massive duty revenues.