



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): A former tenant of a small family brewer

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?

They should be treated as non-managed pubs as the franchisee is a self employed individual working to a stricter code than a tenant.

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

There would be some extra cost in terms of rent to a tenant able to buy outside of the tie but it would enable him to stock the right products for his target market, enabling him to increase his income and, providing he has understood his target markets needs correctly, his profit.

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

Self regulation has not worked. Since the Beer Orders, Pub Cos have grown both in size and in greed. What was overlooked at the time was the Law of Unintended Consequences, allowing the situation we are now in. The only way to resolve this is for a Statutory Code of Conduct, but make certain that there are no unintended consequences that would allow unscrupulous companies to feed off the hardworking publicans who have suffered for years!

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, but only if we are talking about companies with more than 500 pubs. If the same principles were to ever be applied to the small family brewers we would lose them forever.

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, but this should be of the tenants choice, not from a list offered by the Pub Co!

- 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?

Tenant should include franchisees, as some Pub Cos are developing this role as a way around future obligations towards their tenants.

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.

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?

No.

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.

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. However, Pubcos to which the Code applies (more than 500 pubs) should be responsible and it should be seen as part of their operating costs. This charge should not be passed on to tenants and therefore there should not be any impact on tenants, consumers or the overall industry!