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Sent: 13 June 2013 12:42
To: Pubs Consultation Responses
Subject: Fair Deal for Your Local - Consult Response to BIS 130613.doc
Attachments: Fair Deal for Your Local - Consult Response to BIS 130613.doc

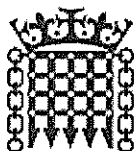
TO: Pubs Consultation
Consumer and Competition Policy
Department for Business, Innovation and Skills
3rd Floor, Orchard 2
1 Victoria Street
London
SW1H 0ET

Dear BIS,

Please find my consultation response to the Consultation on Pubcos and their tenants.

Thank you,

Jenny Willott



Jenny Willott MP
Liberal Democrat, Cardiff Central

House of Commons, London. SW1A 0AA
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04/12/2013



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): Individual Member of Parliament

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?

The statutory code should contain a provision that all agreements that contain tied provisions should be fair, reasonable and comply with 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.

Tied licensees will be able to negotiate lower tied rents as the current rents do not offset the inflated tied product prices adequately. Lower rents would result in higher net earnings for the licensee, which would in turn encourage reinvestment and more importantly improve profitability, which will reduce the current high number of pub closures and the high business failure rate of tied publicans.

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

Self regulation has not worked so far. The new proposed Self Regulatory Board does not share the same commitments as Government, to deliver fairness and ensure a tied licensee is no worse off than if they were free of tie. Many licensees do not feel that self regulation is independent, so confidence in it is low.

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?

1. I would like to see a Market Rent Only option, under which a licensee can choose either to remain tied or to pay a market rent and purchase beer (and any other formerly tied products) from any source.

2. As in the Industry Framework Code, there needs to be a clause in the Statutory Code that states that "All contracts will be fair, reasonable and comply with all legal requirements."

3. It should be made clearer that all rent assessments, especially at rent review and lease renewal, must follow RICS guidance, based on the principle that a tied licensee should be no worse off than a free-of-tie licensee.

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**

This is essential, as it would give licensees the opportunity to sever unfair contract terms in tied agreements.

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?

Another option is a mandatory free-of-tie option with an open market rent. If the rent cannot be agreed between the parties then it should be determined by an independent third party in accordance with RICS rent assessment guidance.

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

The Adjudicator should have similar powers to those of the OFT in the case of Unfair Contract Terms in Consumer Tenancy Agreements, essentially having the power to render an unfair contract term unenforceable.

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?

Pubcos and brewers are already paying for the self regulatory approach, and while a levy for implementing the statutory code will reduce funds for self regulation, the workload in this area will be dramatically reduced as most complaints are connected with the six biggest firms. Funding the Adjudicator and statutory regulation through a levy may in itself drive behaviour change as more complaints would result in higher costs for the Adjudicator and therefore a higher levy for pubcos, but the reverse would also be true, providing a financial incentive for pubcos to comply with the code.