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From: [James.mcmahon@oldham.gov.uk] - behalf of Cllr J McMahon
Sent: 13 June 2013 21:45
To: Pubs Consultation Responses
Subject: Pubs BIS consultation
Attachments: 130613 Pubs BIS consultation.doc

To whom it may concern,

R.e. BIS Pub Companies and Tenants Government Consultation Response

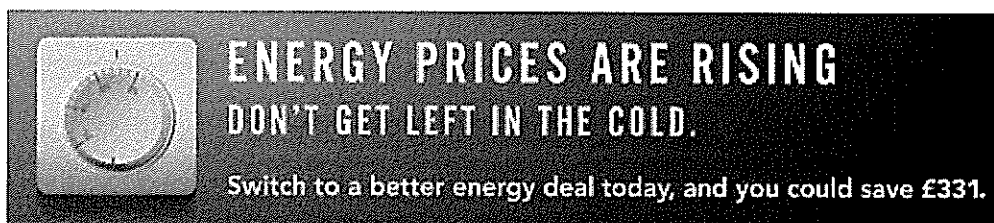
Please find attached response to the BIS Pub Companies and Tenants Government Consultation. As reflected in these answers, I am in favour of a Statutory Code binding on pub companies and family breweries that own more than 500 pubs. I support the GMB proposals for open market rent review, increased transparency, the abolition of gaming machine ties, guest beers, and limitations on the use of flow monitoring equipment. I welcome this consultation and look forward to an update on its conclusions in due course.

Yours sincerely

Councillor Jim McMahon
Leader of Oldham Council
Member for Failsworth East Ward

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05/12/2013

BIS Pub Companies and Tenants Government Consultation Response

Respondent status: Local Government

1. Should there be a Statutory Code? **Yes**
2. 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**
3. 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**
4. How do you consider that franchises should be treated under the code? **As with leases and tenancies.**
5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence. **There is a danger that less scrupulous pub companies will overcharge tied tenants for rents unless proper legislation is in place to prevent them from doing so. For example, in 2009 it was reported by the Office for Fair Trade that the average tied leasee in the pub industry is being overcharged by pub companies by approximately £12,000 per annum. The proposed Statutory Code with the offer for tied tenants to buy products from the open market and pay a fair market rent for their pub building offers a robust solution. Without this provision within the Statutory Code however, pub companies may be able to put up rents unfairly by overcharging for products that tenants are tied into buying from them.**
6. What are your views on the future of self-regulation within the industry? **Companies with fewer pubs than the proposed Statutory Code threshold of 500 should continue to operate a self-regulatory regime. However, this should be open to review.**
7. 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**
8. 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 the drink's 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**
9. Are there any areas where you consider the draft Statutory Code (at Annex A) should be altered? **The considerations as expressed in the answer to question 8 above should be reflected in the Statutory Code. Also, in addition to pub companies, family breweries should be subject to regulation.**
10. Do you agree that the Statutory Code should be periodically reviewed and, if appropriate amended, if there was evidence that showed such amendments would deliver more effectively the two overarching principles? **Yes**

11. Should the Government include a mandatory free-of-tie option in the Statutory Code? **Yes**
12. 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? **The considerations as expressed in the answer to question 8 above.**
13. Should the Government appoint an independent Adjudicator to enforce the new Statutory Code? **Yes**
14. 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**
15. 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**
16. Do you consider the Government's proposals for reporting and review of the Adjudicator are satisfactory? **Yes**
17. Do you agree that the Adjudicator should be funded by an industry levy, with companies who breach the Code more paying a proportionally 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**