



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 x
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?

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.

JD Wetherspoon PLC is a managed pub company founded in 1979 by our current chairman and majority shareholder Tim Martin. The company currently operates 880 public houses in the United Kingdom. All of its premises are owned on either a freehold or leasehold basis by the company directly and operated by managers who are employees of the company. None of the company's premises are operated on a tenancy or leasehold model and as such the provisions of the proposed Statutory Code which is the subject of this consultation have no relevance to our business model. On this basis, we have chosen not to respond directly to the whole of this consultation but have limited our response to questions 2 and 17 as the only ones with a direct bearing on us.

We note that it is proposed that the Code will automatically apply to those pub companies which have over 500 premises but that the actual provisions of the Code will only apply to the non-managed pubs of such companies. This is self-evident. In our case, we have no premises to which the provisions of the proposed Code should apply. On that basis we see it as unnecessary and disproportionate that the Code should automatically apply to JD Wetherspoon or similar companies who operate no tenanted premises, whether tied or non-tied, despite being over the proposed threshold figure of 500 pubs.

Our main practical concern regarding the Code applying to the company arises from the proposed funding model for the Adjudicator rather than its contents per se. Paragraph 6.16 of the Consultation document states that each of the large pub companies covered by the proposed Code would pay a share of the levy necessary to fund the Adjudicator. The consultation is at pains to point out the possibility that those companies that most breach the Code should pay the most into the levy but no mention is made of an exemption for companies like our own to whom the proposed Code would apply by virtue of size but have no actual pubs covered by its provisions.

We presume this must be an oversight by the compilers of the consultation or an unintended and unforeseen consequence as it is clearly neither proportionate, targeted nor fair (Government principles stated in Para 3.11 of the consultation) that such companies be expected to pay for adjudication of a business model they do not operate. This would be a wholly unjust administrative and financial burden.

We do have a very small number of premises that are sub-let to other operators in circumstances where we no longer wish to operate the premises but where we are unable to surrender the head lease before the expiry of the term or until a break point is reached. All such arrangements are completely free of tie and we have no on-going relationship other than as commercial landlord. We do not believe it is the proposed Code's intention or purpose to regulate such relationships and therefore they should not give rise to any obligation to pay a levy contribution.

We strongly advocate that either the Code does not apply to wholly managed pub companies, or if it does, then such companies are exempt from any contribution to the levy unless and until they operate non-managed premises.

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?

Q4. How do you consider that franchises should be treated under the Code?

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

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

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

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.

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

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?

Q11. Should the Government include a mandatory free-of-tie option in the Statutory Code?

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?

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

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?

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?

Q16. Do you consider the Government's proposals for reporting and review of the Adjudicator are satisfactory?

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?

See our response to Q2 above.

JD Wetherspoon PLC
14th June 2013.