



## 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](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 ✓
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.

**COMPANY NAME: TRUST INNS LIMITED**



**CONTACT DETAILS:**     **LYNNE D'ARCY – MANAGING DIRECTOR**  
Trust Inns Ltd., Blenheim House, Foxhole Road, Ackhurst Park,  
Chorley, Lancs. 01257 238800 – (01257 238800) – [lynne.darcy@trustinns.co.uk](mailto:lynne.darcy@trustinns.co.uk)

Trust Inns Limited welcomes the opportunity to respond to this consultation. We operate 506 pubs nationally and employ 118 people across our company.

Our Estate consists of 500 leased/tenanted pubs and 6 managed houses. Within our tenanted estate, over 90% of our tenants have agreements for less than a 3 year term and [ ] tenants have free of tie leases. We hope the Government's aim is to regulate proportionately and be careful not to place an undue burden on the companies who are currently treating their tenants fairly.

### **Consultation questions**

#### **Q1. Should there be a statutory Code?**

No, we do not believe that a Statutory Code is necessary. We are totally committed to fair and transparent dealing with our tenants and we are committed to self regulation.

Version 6 of the Industry Framework Code is only just in place and should be given more time to show that it is working.

As a small company we do not need additional regulatory burden and more costs on the business.

#### **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. Whilst as outlined above we do not believe that there is a need for a Statutory Code, we do agree that should a Code be introduced it should only apply to Companies that own and operate more than 500 leased / tenanted pubs. We believe that the threshold of 500 is the appropriate *de minimis* level as it represents approximately 1% of the pubs market and therefore focuses the Code on the businesses with the greatest market power.

For the Statutory Code to not be binding on such smaller companies would not distort competition, indeed in practice, it is likely that such companies would be obliged to voluntarily follow the Statutory Code if they wish to compete for the best tenants against the larger Pub Companies.

Notwithstanding, that Trust Inns may have fewer pubs than the 500 statutory threshold it would continue to operate a self regulatory regime, honour its company code and voluntarily commit, in our agreements, to use the arbitration function of any Statutory Adjudicator to resolve disputes.

Having said that, we are not aware of any registered complaints or disputes involving our tenants.

**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?**

The Code should only be binding on those tenanted pubs owned by the Company save for free of tie leases. A lease that does not include a tie is simply a commercial lease and should be treated accordingly under existing Landlord & Tenant legislation.

Consideration should also be given to excluding Tenancy at Will (TAW) short term agreements that are often used by us to allow tenants to try out running a pub before signing up to longer agreements. If TAW's are included within the Statutory Code it may lead to more short to medium term closures.

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

Trust Inns do not operate franchises but believe franchises that are regulated under the British Franchise Association should not be covered by any Statutory 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.**

In reality there is likely to be little, if any, transfer value once the range of benefits that we provide to our tied tenants is taken into account.

Last year we spent £4m on capital investment in our Estate. This year we are planning to spend a similar amount.

However, any uncertainty in the future created by the potential introduction of a Statutory Code incorporating mandatory free of tie or guest beer provisions would definitely make us rethink any investment in our tenanted estate. It is very unlikely that Banks will step in to replace our investment by funding our tenants.

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

We are a small company that is close to our tenants and we fully support self regulation. We have had no recorded complaints.

**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**

We are totally committed to fair and lawful dealing with our tenants.

**ii. Principle that the Tied Tenant Should be No Worse Off than the Free-of-tie Tenant**

The principle is fine but proving it will be difficult to demonstrate.

Trust Inns are perhaps unusual as we do also operate [ ] free of tie leases. All were individually negotiated with the operators using a transparent comparative analysis but each one is unique to that particular pub and it is envisaged that trying to mandate a formula will be complicated and impracticable. We do have concerns that some of the tenants who are calling for a free of tie option do not understand its full implications. It is not simply having the right to buy beer cheaply from a wholesaler. It also means that Landlords do not have to provide any support with the provision and maintenance of the dispense equipment, stock taking, brand promotion and merchandising services.

Anecdotally a tenant who has recently taken a Free of Tie lease rang late last Friday afternoon panicking that his beer dispense system was broken. If he had been a tied tenant, the Company would have arranged for an engineer to call within an agreed time window and attend to the repair. In this case, the Free of Tie tenant was advised to contact his supplier, which was a wholesaler.

Any Free of Tie tenant buying beer more cheaply from a wholesaler must be advised to set aside a portion of his "saving" to take out a maintenance contract, subsidise brand promotion and fund any marketing initiatives.

This is apart from saving for any capital development associated with driving beer volumes. Such development would not be funded by the Company if it was not to benefit from any increased beer sales.

It is noted in the consultation document "there have been concerns raised regarding the chronically low levels of literacy and numeracy amongst tenants", we offer a free training programme. It also states that "the tie complicates the relationship". We disagree. The tie supports our tenants and a free of tie relationship removes that support.

Trust Inns have also had a Free of Tie lease fail recently. The difficulty that we now face in reletting the property is that we have lack of knowledge regarding outlet performance and limited information due to the arms length relationship between us and the previous 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.***  
Agree.
- 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.***  
Agree.
- iii. *Abolish the gaming machine tie and mandate that no products other than drinks may be tied.***

We do not agree it should be abolished. We believe that the machine tie helps us and our approved suppliers to administer gaming machine permits and licences ensuring pubs are legally compliant. If the tie was removed we believe that it could

open up the market to rogue operators and high incidents of non compliance with potential loss of revenue. Trust Inns already discuss a free of tie option with tenants. However if a tenant is free of tie on machines the income would be included as part of the divisible balance and therefore taken into account when the rent levels are assessed. In the case of the tied model income from the machines is not included in the divisible balance.

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

Do not agree. We do not believe that there would be a benefit to the consumer. In fact it could be quite the opposite if the guest beer selected was an international brand.

**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.***

Do not agree. Whilst we do not rely solely on evidence from flow monitoring equipment to determine if a tenant is complying with purchasing obligations, it is a tool that provides information and prompts us to query a situation. It seems odd to us that we cannot rely on the evidence but presumably it is admissible in Court where there is a duty to disclose all evidence relevant to any dispute.

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

Please see replies to other questions.

**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?**

No.

As stated above, Trust Inns do have currently 1 free of tie leases but we do not believe that it is a viable option for every pub. Understandably free of tie agreements always attract a higher level of rent and, as is the case with commercial leases, there is little incentive for a Landlord to offer rent concessions in an economic downturn. If such a downturn in trade exists, even for a short period caused by weather disruption, the rent is still payable and the difficulties encountered will fall disproportionately on lower volume pubs. Rent is fixed but beer costs are variable. This may lead to some pubs becoming unviable and closing. Potentially consumer choice will suffer because a tenant may accept a free trade loan to develop the wet led business (the Landlord is unlikely to finance it) from a major supplier in return for a tie on all products sold resulting in a tie more restrictive than currently exists.

We also believe as stated earlier that the concept and consequences to a tenant of being free of tie are not fully appreciated.

**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?**

We believe that the existing self regulatory system provides this. It is worth pointing out that in our experience where the tie exists rents are much lower than where there is no tie.

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

We understand that there are already a number of services such as PICA, PIRRS, ACAS, and the legal system to handle disputes as well as our own internal dispute resolution. Do we need the cost of another one? Will it result in duplication of cost?

Trust Inns are not against an adjudication system, but please just for simplicity make it clear and cost effective.

**Q14. Do you agree that the Adjudicator should be able to:**

**i. Arbitrate individual disputes?**

See above answer to Q13.

**ii. Carry out investigations into widespread breaches of the Code?**

See above answer to Q13.

**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?**

See above answer to Q13.

**II. Requirements to publish information ('name and shame')**

See above answer to Q13.

**III. Financial penalties?**

See above answer to Q13.

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

See above answer to Q13.

**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 above answer to Q13.