



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)*

<i>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.</i>
<i>Representative Organisation</i>
<i>Trade Union</i>
<i>Interest Group</i>
<i>Small to Medium Enterprise</i>
<i>Large Enterprise</i>
<i>Local Government</i>
<i>Central Government</i>
<i>Legal</i>
<i>Academic</i>
<i>Other (please describe): Investor in tied pub</i>

*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, but if complaints against smaller pubcos increase, there should be provision that they can also be included in this Code – with fees and penalties being proportionate to their size.**
- 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? In line with tied pubs, i.e. they should be no worse off than a pub without tie.**
- Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence. I have no hard evidence to support my opinion other than my observation that the tied pub in which we have an investment has not provided more than a meagre living for its tenants (one of them being our son) despite the provision of excellent services, long hours, capacity crowds. Their staff frequently earn more than they do. The price of beer continues to escalate and the public will not pay such inflated prices. The sale of beer does not contain any profit element or there would be no sales at all. Moreover, there is insufficient overall profit to improve the premises and it is a struggle even to keep them in a reasonable state. The pubco's "business development" representative is not at all interested in helping the pub in any way but only tries to find avenues to impose large fines and constantly demand higher sales.**
- Q6. What are your views on the future of self-regulation within the industry? The evidence is that self-regulation does not work, particularly for the large pubcos.**
- 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**

Further reflection on QUESTION 8 (iv)

Provide a "guest beer" option in all tied pubs

We do not think this goes far enough. If a tenant has fulfilled his obligations as far as the agreed level of his purchase of pubco beer (wet rent barrelage), he should be free to stock any other beverage he wants.

Given that it is impossible to make a profit on pubco beer at the current prices charged because the public simply will not pay such high prices, the tenant must make his profit on other drinks. Inevitably, this means a push on spirits. This is not good for anyone.

If a tenant has to buy all his beer (or other tied drinks) from the pubco, no matter at what greater quantity this might be beyond the agreed level, this means the pubco "rent" automatically increases beyond the agreed amount. The pubco makes the additional profit but there is none for the tenant.

Currently, if the pubco finds any other drink on the premises, the tenant can be fined a hefty amount – even if the wet rent obligations have been fulfilled. This cannot be right.

These conditions certainly do not equate to those of a tenant free-of-tie.

- iv. ***Provide a 'guest beer' option in all tied pubs. Yes – but this should also apply to other 'guest' options where applicable e.g. cider, and there should be no tie on soft drinks or spirits.***
- 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?**

**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, definitely. Knowing that tenants had access to this option should in itself provide an incentive for the pubcos to act fairly.**

**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? If a pubco provides finance for building works it insists on ("capex" usually as a loan added to the rent at high percentage cost) the tenant should be able to employ builders from the open market and not be forced to employ those allied to the pubco at inflated prices as happens currently.**

**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? Make them reduce the price of tied drinks by x% for every breach?***
- II. Requirements to publish information ('name and shame') Yes – but doubt this will do much good.***
- III. Financial penalties? Yes though they will undoubtedly attempt to pass these on in some way.***

**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 - what else is there? I am sure the pubcos will try to pass this on to tenants in some covert way which will have a bad effect at retail level.**