



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
Local Government
Central Government
Legal
Academic
Other (please describe): Individual

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. Significantly lower. Tenants of smaller Pub Cos should be entitled to the same rights as larger ones irrespective of the generally fairer treatment received by such tenants. Having said that Pub Cos with a good record (i.e. few complaints and no fines could be subject to 'lighter touch' regulation)**
- 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? Same as a tenancy in some respects but obviously not for others. A franchisee may for example own his own premises and pay no rent.**
- Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence. It should be structured such that the costs of the scheme fall on those that breach the scheme. This would be through the issuing of fines. Pub Cos which are found not to be in breach of the code and still incur costs should be able to reclaim these from a fund supported by any fines.**
- Q6. What are your views on the future of self-regulation within the industry? It has been established by now that this does not work.**
- Q7. Do you agree that the Code should be based on the following two core and overarching principles? Yes to both**
- 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. 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. No. The figures would not be independent. Some other means needs to be found.***
 - iii. *Abolish the gaming machine tie and mandate that no products other than drinks may be tied. Yes. This would give a tenant the opportunity to expand his business and lead to innovation and competition between pubs.***

- iv. *Provide a 'guest beer' option in all tied pubs. Yes. A 'guest beer' to be strictly defined as a beer produced by a brewery not linked in any way (financial, ownership or otherwise) with the principle brewery or owners of the Pub Co..*
- 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?

In addition to the tenant's right to a rent review they should also be entitled to.....

A fair contract. Standards based on good industry practice should be established.

Pub Cos should be obliged to sell beer to a tenant at the same price as they would charge on the free market for the same or a similar beer. They should be obliged to provide evidence that this is being complied with. Higher prices are anti-competitive.

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. This is probably a step to far. If a level playing field is established competition should allow the best business models to be successful.

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? It would be easier to administer and enforce the abolition of the higher beer price than to offset high beer prices against low rents. See Q9.

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?*

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? A recommendation is not a sanction.*

II. *Requirements to publish information ('name and shame') Only if a financial penalty is imposed.*

III. *Financial penalties? This would be the principal sanction.*

Q16. Do you consider the Government's proposals for reporting and review of the Adjudicator are satisfactory? No comment.

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?

Pub Cos - There should be little impact on those who breach the code. It isn't expensive to comply with good practice. Where possible the scheme should be funded entirely through fines with refunds to those with a clean bill of health to cover their costs.

Tenants – Should get a fairer deal and the opportunity to expand and diversify their business.

Consumers – should gain through the removal of constraints on tenanted pubs and greater competition.

Overall Industry – Has benefited from increased competition over the years. The removal of restrictive practices will enable this to continue. It is possible that some large Pub Cos may no longer wish to operate under such a scheme but this will be limited to those that choose not to operate in a fair and responsible manner in the first place. The gap will be filled by smaller and more entrepreneurial operators which can only be a good thing.

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