



## 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. **PLEASE SEE END OF FORM** 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.
<input type="checkbox"/> Representative Organisation
<input type="checkbox"/> Trade Union
<input type="checkbox"/> Interest Group
<input type="checkbox"/> Small to Medium Enterprise
<input type="checkbox"/> Large Enterprise
<input type="checkbox"/> Local Government
<input type="checkbox"/> Central Government
<input checked="" type="checkbox"/> <b>Legal</b>
<input type="checkbox"/> Academic
<input type="checkbox"/> 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? 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, please see additional notes below.**
- 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 the same fashion.**
- Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence. Unfortunately, I cannot provide evidence without breaching client confidentiality. However, I am aware that the rent charged by landlords is based not just on open market rents but also on turnover – if a pub makes a profit, the money essentially gets passed on to the landlord. If the tenant ceases trading as a result, the landlord can easily find another tenant who will pay the same rent based on those income figures. There appears to be no risk to the landlord at all.**
- Q6. What are your views on the future of self-regulation within the industry? It clearly has had no effect whatsoever.**
- 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 No. The tied tenant will be worse off on the basis that it has to pay an open market rent, which is normally higher than a freeholder would pay on a mortgage (by between 3-5%).***
- 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, although I would restrict what "events" are – the tenant should still be subject to normal market forces as in any industry; they shouldn't be allowed to decrease the rent on the basis of poor trading.***
  - 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. No.***

- 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? Part 6(a)(iii) – make sure that the Tenant does not have the ability to say that it had the opportunity of taking such advice but chose not to – advice must be sought. Parts 9(e) and (f) – the landlord will always have appointed a surveyor to carry out their survey report. There is no mention of the report having to be reasonable as to the amount of works (depending on the wording of the lease) or the cost of them. I would suggest the tenant be obliged to have its own survey carried out. Part 9(v) – specify the method of determination (an independent surveyor is unlikely to be truly independent – if there is a set mechanism that a surveyor must be used, then the landlord will undoubtedly use or want to use surveyors it has used in the past; if the surveyor knows that by completing a job more favourably for the landlord, it is likely to receive further work, even though there is no contractual tie).

**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.

**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? Making the landlord provide information to the tenant as to the average rents in the particular area for their own properties as well as beer-tie prices. Specify that this must not be the headline rates as specified in the documents, but the amounts actually received by them (landlords will often grant leases with high headline rents and ties and then provide side letters to individual tenants with reductions, meaning comparisons on headline rates do not represent what is paid. They also provide rebates, again to make the headline rate seem higher than it is). Ensure that the lease is, insofar as it can be for the type of property, Lease Code (The Code for Leasing Business Premises in England and Wales 2007 ) compliant.

**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? Yes.*

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

**III. Financial penalties? Yes.**

**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? Yes. What, in your view, would be the impact of the levy on pub companies, pub tenants, consumers and the overall industry? The impact would fall on tenants but most likely not customers. The pub company can levy fees for other items, such as an 'application fee', which would be paid by the tenant and would cover the administrative costs. This is not necessarily unfair, if it protects the tenant overall.**

***I am a solicitor practising in [redacted] and the views expressed herein are my own rather than being made on behalf of our firm, as I have not had a chance to canvas opinion. I deal with a significant number of sale and purchases of tied public houses, typically Enterprise Inns plc.***

***The findings of the consultation accord with my experience of both tenants and landlords. I advise all clients looking to purchase a tied pub not to do it before I undertake any work at all. As is pointed out, tenants have a real lack of understanding of running a successful business and also negotiation of commercial agreements. Some form of training in these areas ought to be mandatory for tenants.***

***My real concern regarding these proposals is the steps which will undoubtedly be taken by these companies to avoid the legislation. I have been, since not long before the consultation paper was published, dealing with many more subsidiary/group companies of Enterprise in particular, and what I would ask to be considered is that the legislation is worded in such a way that the 500 pubs is taken across the entire group structure, not just 500 pubs within a company (a company being an individual entity in its own right). If it is the latter, then I suspect steps will be taken by these larger organisations to hive off properties into different group companies so that they are limited to less than 500 properties per individual companies and avoid regulation. Bear in mind that Enterprise currently has around 15 companies in its group (minimum) and Punch have at least 74 (I didn't fancy searching any further once getting to that figure).***

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