

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): Private consumer

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, although I would provide for a much lower threshold. I understand that this would capture so-called "family brewery pubcos" but in my extensive experience working in such establishments, as a Quiz Master [self-employed], particularly 5 pubs in London owned by Greene King, I think these tenants should have the same protection under a new Statutory Code that tenants of 500+ Pubcos would have. Otherwise we will be in danger of leaving these tenants adrift of the protection. I am chiefly concerned that prices are set by these brewery/Pubcos, of which Greene King is the largest in London, and tenants are forced to go along with whatever beer the landlord is willing to provide at whatever price e.g. a bar full of Greene King only products, or a 'Guest Ale', which is in reality a Greene King-owned beer but with a different name - Old Speckled Hen, Morlands, Ruddles, all of which are actually brewed by Greene King in its brewery in Bury St Edmund's, Suffolk.

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? Not sure - I think it depends who sets the rents, who sets the prices, from where can the franchisee source the products and if all the answers lead to the franchiser organisation, then they should be treated as if they were in a tenanted arrangement e.g. no differently to any other party covered by the new Statutory Code.

Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Well, frankly, at the rate that pubs are being closed in my neighbourhood, I would say that the Code could quickly have the effect of saving several dozens of pubs closing down across England and Wales every single week. My Post-Code area is " " and I have lived in that Post-Code and frequented pubs in that Post Code area for ten years. I can name 17 public houses that have closed up with all except three which remain vacant (one being squatted), converted to other uses, mainly flats, bookmakers or restaurants. If you extrapolate one London Post-Code in 10 years across just Greater London, where there must be about 200-250 Post Codes (including Croydon, Harrow, Enfield, etc), that gives you 3,400 - 4250 closed pubs in Greater London in the last decade. At the very least you could quadruple that in terms of jobs - 13,600 - 17,000, and what you are seeing is the scrapping of roughly half of all the adult full-time equivalent jobs in anyone average London Borough. I think if you announced that you were planning to introduce a policy (the Beer Orders) and a change of management structure (e.g. to modern conglomerate Pubcos) of a local economy which would make 50% of the local population redundant, and often in debt, you would be deservedly examined for your sanity. Yet that is precisely what has happened in the last 10 years - it has been a silent sickness, with massive human costs. Only a very few people, those at the head of the Pubcos, have squeezed any profits out of this, and even then, largely at the hands of the taxpayer who had to bail out their creditors, the banks.

Q6. What are your views on the future of self-regulation within the industry? This is not an industry with any credible record of genuine, fair and proper self-regulation - the opposite is true, by its own deeds it cannot be trusted to regulate itself.

Q7. Do you agree that the Code should be based on the following two core and overarching principles? Yes, however (ii) is unenforceable in practical terms and needs a fundamental Right to Opt out Tie

i. *Principle of Fair and Lawful Dealing*

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

QB. 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*

iv. *Provide a 'guest beer' option in all tied pubs. In principle, yes, but there are ways around this, as I have evidenced with Greene King.*

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? Yes, a mandatory free-of-tie option should be written into the Code for all.

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? YES, because without this the Code is utterly useless.

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? 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? Binding recommendations, appealable in the High Court

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? Don't know

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?

I have thought about this and see we are creating yet another Quango here, with all the accoutrements that that usually brings - ridiculously highly paid jobs for life, no guarantee of quality, and eventually a monolithic adjunct to the Civil Service, with jobs for the boys, and levies casually slapped onto the industry and immediately passed on to...the ordinary drinker.

Therefore the Levy should be exclusively chargeable out of the profits of each Member of the Code, not transferrable to the consumer. Pricing should be transparent enough that the adjudicator could satisfy itself that the Levy is not being passed on to consumers. If the Code Members behave properly then they won't have to pay much in Levy, so it would be in their interests to conform to the Code properly.

I believe the adjudicator should also offer positions to Lay members to sit on Panels - who are consumers, and that their remuneration can be quite modest. I have sat

[REDACTED] which arbitrates [REDACTED] ow the level of [REDACTED], and did so free of charge, as a volunteer. I was also for many years the [REDACTED] Arbitration Tribunal for tenants and leaseholders of [REDACTED] Council-owned homes, and my fee was only about £60 for half a day (5 years ago). Lay people get satisfaction out of doing a job well, they're not greedy, they are just like Jurors on a Jury Panel. A reasonable fee is deserved, but only a fraction of what a lawyer would charge.

© Crown copyright 2013

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. Visit www.nationalarchives.gov.uk/doc/open-government-licence, write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

This publication is also available on our website at www.gov.uk/bis

Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

If you require this publication in an alternative format, email enquiries@bis.gsi.gov.uk, or call 02072155000.

BIS/13/718RF