



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):

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

Consultation questions

I am responding as a lessee and tenant of Enterprise Inns

Q1. Should there be a statutory Code?

Yes there should be a fair Code for both sides the pubco and tenants.

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.

Code should be for companies of all sizes.

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 about question

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 think that the Pubco business model would fail no matter what we do. Acting on these proposals would make them collapse at a faster rate and free their tenants. Please read my additional comments at the end of the questionnaire.

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

Self regulation would not work

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

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

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? They know already**
- II. Requirements to publish information ('name and shame') Everyone that matters know and the Pubcos are not ashamed.**
- III. Financial penalties? yes - That would be the only way to wake them up**

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

Yes - If a little late. This issue is long overdue to be resolved.

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. Some Pubcos will try to pass the costs to their only source of revenue - tenants. There must be stops in place to make sure that it does not happen.

Additional Comments:

Pubcos have over-expanded in the years pre 2007. They borrowed too much to purchase properties in believe that the assets would continue to be good investments. Now that the recession has hit and asset values plummeted, the Pubcos only source of income is from their surviving tenants. Tied tenants are charged ever higher prices for stock and in turn have to increase their prices to the customer, making them uncompetitive. Companies such as JD Weatherspoon have been able to thrive in this as their competitors, the tenanted pub is unable to compete in price. This has allowed JD Weatherspoons pubs to almost monopolise the trade in out pricing competitors. It comes as no surprise that Weatherspoons is expanding while the small independents around them suffer. It is not Weatherspoons fault that the Pubcos have made their own tenants uncompetitive.

Now that companies like Weatherspoons have been allowed to grow to this unstoppable size how can we assure that the small landlords get a fair chance?

With the government proposals of a Statutory Code it would force the Pubcos to change their business model. Some of these Pubcos may not be able to service their oversized debts without the ability to exploit their tenants. They would have gone bankrupt anyway if they were to continue to exploit tenants and have more and more vacant properties. This proposal only hastens the demise of a broken business model and free their tenants to be more competitive.

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