



## 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)

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): customer

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. Lower: perhaps 100?
- 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?    As tenancies
- Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence. Don't know, but it should lead to fewer pub closures and therefore to fewer job losses, smaller losses to HM Revenue, etc.
- Q6. What are your views on the future of self-regulation within the industry?    It will be as successful in the future as in the past, i.e. not at all.
- 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*    Of course
  - 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. Must be a genuine guest, not just an option from the company's own portfolio. This abuse was tried on, under the Beer Orders of the early 1990s.
  - 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.*** If, and only if, the owner can prove to a court of law that the equipment is accurate, I can see no objection. On the other hand, no owner is going to go to that expense. And surely, offering false evidence is an offence?

**Q9.** Are there any areas where you consider the draft Statutory Code (at Annex A) should be altered? None

**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. Few licensees can afford to take on a pub chain or brewery at law.

**Q14.** Do you agree that the Adjudicator should be able to:

**i.** *Arbitrate individual disputes?* Yes: essential

**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?* Not sure; they will only be passed on to the customer, rather than be paid for by the shareholders, whose responsibility it really is.

**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, but costs should be recovered from errant owners.

### **Further thoughts:**

1. Should pub owners be required to publish the Adjudicators findings in shareholders' annual reports? I think it might benefit the publican and the customer, in the long run.

2. I wish someone could devise a way in which penalties could be visited on the owners: i.e. shareholders, and their officers, the board of directors, rather than being passed on to the publican and customer. Is it legal to take penalties from the dividends?

3. Please revisit the Monopolies & Mergers Commission's report 'The Supply of Beer', cmd 651 of March 1989, and the subsequent legislation: The Supply of Beer (Tied Estate) Order 1989, SI 1989/2390 etc. and consider what went wrong. This is not the time to argue that repealing this instead of updating it was a mistake, but I am not alone in thinking so.

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**With respect, Richard Larkin; 42 Mansfield Road, London NW3 2HT**