



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): Interested Party

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?

NO – THE INDUSTRY SHOULD BE LEFT TO CONTINUE USING THE VOLUNTARY CODE CURRENTLY IN PLACE.

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.

NO – IF ANY CODE IS INTRODUCED IT HAS TO APPLY TO ALL COMPANIES IN THE INDUSTRY EQUALLY. WHY ARE THE RIGHTS OF A PUBLICAN IN A SMALL ENTITY ANY DIFFERENT FROM THE RIGHTS OF ONE WHO HAPPENS TO OPERATE IN A BIGGER COMPANY. ALSO IF A PUBCO HAPPENED TO DROP BELOW OR OVER THE 500 MARK HOW COULD YOU PRACTICALLY MANAGE THE ENFORCING OR REMOVING OF THE CODE ON THAT ENTITY.

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, AGAIN WHY WOULD THE RIGHTS OF ONE PUBLICAN BE ANY DIFFERENT TO THE RIGHTS OF ALL THE OTHERS.

Q4. How do you consider that franchises should be treated under the Code?

EXACTLY THE SAME – PREFERABLY NO STATUTORY CODE, BUT IF THERE IS ONE THEN FRANCHISEE PUBLICANS MUST HAVE THE SAME RIGHTS. WHY ARE FRANCHISES ANY DIFFERENT? THE SUPPORT/INTERACTION FROM THE PUBCO IS SLIGHTLY DIFFERENT BUT IN ESSENCE THE RELATIONSHIP IS NO DIFFERENT – TENANT AND LANDLORD.

Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence.

IMPOSSIBLE TO QUANTIFY, BUT WHEN HAS ANY EXTRA REGULATION/BUREACRACY EVER RESULTED IN LOWER COSTS FOR ANYONE. THE WHOLE PUB TRADE DESPERATELY NEEDS LOWER TAXES, LOWER UTILITY COSTS (WHY ARE THE PRACTICES OF THE UTILITY COMPANIES NOT EQUALLY UNDER REVIEW) AND INCREASED TRADE. THE LAST THING IT NEEDS IS ANYTHING THAT REDUCES THE CASH BEING RETAINED IN OR BEING INVESTED IN THE INDUSTRY.

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

AS CAN BE SEEN FROM THE BII STATISTICS ON CALLS FROM TENANTS – THE PROPER ONES CLARIFIED BY THE BII NOT THE FACTUALLY INACCURATE STATEMENTS MADE IN THE BIS CONSULTATION DOCUMENT – THE NUMBERS OF COMPLAINTS ARE INSIGNIFICANT. EQUALLY THE CGA STATISTICS IN THE PAPER SHOW THAT 70% OF RESPONDENTS WOULD RENEW WITH THEIR PUBCO, WHICH HARDLY REFLECTS A POORLY RUN INDUSTRY.

GIVEN THE ECONOMIC WOES OF THIS COUNTRY AND THE VERY HIGH LEVEL OF TAX LEVIED ON ALCOHOL (TOGETHER WITH THE "LOSS LEADING" UNDERPRICED SUPERMARKET SUPPLY) IT IS NOT SURPRISING THAT A NUMBER OF PUBS ARE SUFFERING. AT THE CURRENT TIME THERE ARE CLEARLY TOO MANY PUBS IN THE COUNTRY GIVEN THE DECLINING LEVELS OF BEER SALES VOLUME – EVEN INCLUDING SUPERMARKETS.

PER THE CGA STATISTICS IN THE REPORT, MORE FREE OF TIE PUBS CLOSE THAN TIED PUBS. I BELIEVE THIS IS BECAUSE OF THE LEVELS OF SUPPORT THAT THE PUBCOS HAVE BEEN GIVING THE TIED PUBS OVER THE PAST 5 YEARS. UNLIKE A FREE OF TIE PUB WHO HAS NO-ONE TO HELP, IT IS NOT IN THE INTERESTS OF THE PUBCOS, CONTRARY TO THE RANTINGS OF THE MINORITY PRESSURE GROUPS, FOR PUBLICANS TO FAIL AND PUBS TO CLOSE. THEREFORE THEY DO THEIR VERY UTMOST TO KEEP PUBS OPEN, GIVING RENTAL AND BEER DISCOUNTS ETC.

THE ISSUE IS THAT THERE COMES A POINT WHEN PUBS BECOME ECONOMICALLY UNSUSTAINABLE AND NO MATTER HOW LOW THE RENTS ARE OR THE BEER PRICES THEY CANNOT SURVIVE. SURELY NO-ONE EXPECTS PUBCOS TO RUN PUBS AT A LOSS?

UNFORTUNATELY THE MAJORITY OF TIMES THAT SELF REGULATION WORKS (I.E. RENT REVIEWS ARE CONDUCTED AGREEABLY AND EVERYONE THRIVES) DO NOT MAKE THE HEADLINES. THE MINORITY OF CASES WHERE THE PUB IS SIMPLY NOT SUSTAINABLE AND THE PUB FAILS ARE ALWAYS SEIZED UPON BY THE VOCAL MINORITY PRESSURE GROUPS AND THE DEMISE OF THE PUB IS PLAYED OUT IN THE COURT OF PUBLIC OPINION WITH NO CONCERN FOR THE REAL FACTS BEHIND THE SITUATION.

IN ADDITION I DO NOT BELIEVE THAT SELF REGULATION HAS BEEN GIVEN ENOUGH TIME. IT HAS DEFINITELY STARTED TO WORK AND A LOT OF THE PARANOIA IN THE INDUSTRY IS BASED ON THE DAYS PRE VOLUNTARY CODE.

THEREFORE SELF REGULATION SHOULD CONTINUE, OR AT WORST THERE SHOULD BE A LIGHT TOUCH REGULATORY REGIME TO ENSURE FAIRNESS AND APPLICATION OF THE FRAMWEWORK CODE THAT ALREADY EXISTS.

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*

CLEARLY A BIASED QUESTION AS IT DOESN'T ALLOW US TO ENVISAGE A NON CODE SITUATION. HOWEVER IF A STATUTORY CODE WAS IMPLEMENTED THEN YES THIS SHOULD BE A PRINCIPLE – HOWEVER THIS MUST APPLY BOTH WAYS SO BE FAIR FOR ALL PARTIES; TENANT AND PUBCO. EQUALLY ALL THE MAJOR SUPPLIES SHOULD BE SIMILARLY REGULATED – THE BEER SUPPLIERS AND THE UTILITY COMPANIES ARE TWO VERY GOOD EXAMPLES.

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

THAT DEPENDS ON HOW THIS IS DEFINED AND THE RENT CALCULATED. THE COST OF CAPITAL AND COST OF ENTRY INTO A FREE OF TIE, INDEPENDENT PUB IS COMPLETELY DIFFERENT TO TAKING ON A TIED PUB WHERE THE PUBCO HAS ALL OF THE FINANCING COST AND PROPERTY RISKS ETC.

ALSO ALL PUBS ARE DIFFERENT AND UNIQUE DEPENDING ON LOCATION, OFFERING (FOOD VS WET), SIZE ETC.

THIS DOES NOT SEEM VERY PRACTICAL AS THERE COULD BE A WHOLE HOST OF OTHER BENEFITS/SUPPORT SUPPLIED BY THE PUBCO THAT IT WOULD BE ALMOST IMPOSSIBLE TO FULLY QUANTIFY AND AGREE UPON IN A RENT ASSESSMENT FOR THE TWO DIFFERENT SCENARIOS. HOW THAT RENT ASSESSMENT WORKS WILL BE THE KEY AND ENDING UP WITH A NON RICS SUPPORTED CALCULATION WOULD NOT MAKE SENSE.

I ALSO BELIEVE THAT TO INTERFERE IN A FREE MARKET EVENT – AGREEING A CONTRACT BETWEEN TWO WILLING PARTIES WHO ARE NOT BEING FORCED TO ENTER THE AGREEMENT – IS WHOLLY INAPPROPRIATE IN A WESTERN CAPITALIST ECONOMY. WHEN ARRANGING A CONTRACT WITH A NEW TENANT, IF THEY DO NOT LIKE THE TERMS OF THE ARRANGEMENT ON OFFER THEN THEY HAVE THE FREEDOM TO WALK AWAY AND FIND ANOTHER PUB OR TAKE A FREE OF TIE OPTION BY BUYING A PUB. HOW CAN THE FREEDOMS OF EITHER PARTY BE RESTRICTED BY GOVERNMENT INTERVENTION – THAT GOES WHOLE HEARTEDLY AGAINST THE COALITION GOVERNMENT'S AIM TO REDUCE REGULATION/BUREAUCRACY.

CLEARLY THERE SHOULD BE SOME SAFEGUARDS (AS UNDER THE VOLUNTARY CODE) TO PREVENT ABUSE DURING A CONTRACT ETC, BUT SUCCESSIVE INVESTIGATIONS OVER THE YEARS HAVE ALL PROVED THAT THE TIED MODEL WORKS.

SOME OF THE PRINCIPLES OUTLINED COULD WORK – SUCH AS 5.30 BUT IN PRACTICE THIS IS WHAT WE HAVE NOW. A REGULATOR IS NOT NECESSARILY NEEDED WHEN YOU HAVE THE INDEPENDENT ARBITRATION ROUTES AVAILABLE UNDER THE VOLUNTARY APPROACH.

HAVING A FREE OF TIE OPTION SEEMS REASONABLE, BUT THIS HAS TO BE NEGOTIATED AS PART OF THE LETTING OF THE PUB AND NOT PRE-DETERMINED BY GOVERNMENT INTERVENTION

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.*

NO, THIS WOULD BE COMPLETELY UNWORKABLE. IT DEPENDS ON THE CONTRACT THAT THEY WILLINGLY ENTERED INTO IN THE FIRST PLACE,

BUT A PERIODIC REVIEW MAY BE SENSIBLE. HOWEVER WHO DECIDES WHAT IS A SIGNIFICANT PRICE INCREASE AND WHAT IF THAT IS SIMPLY PASSING ON THE INCREASE FROM THE BRAND OWNERS? IF THE BREWERIES DECIDE TO INCREASE THEIR PRICING THIS IDEA SUGGESTS THAT THE ONLY PARTY WHO WILL SUFFER IS THE PUBCO AS NO DOUBT THE EXPECTATION IS THE RENT WILL DROP TO COUNTER THE PRICE INCREASE.

EQUALLY ANY EVENT OUTSIDE OF THE TENANTS CONTROL WOULD PROBABLY BE OUTSIDE OF THE PUBCOS CONTROL AS WELL. SO IF BECAUSE OF THE GOVERNMENT AUSTERITY PROGRAMME A LARGE PUBLIC SECTOR SITE CLOSURES, DOES THAT MEAN THE RENT OF THE NEARBY PUB HAS TO BE REASSESSED DOWN SO THE TENANT DOES NOT GET IMPACTED?

THIS COULD ALSO LEAD TO A SIGNIFICANT EXTRA COST FOR EVERYONE AS WE COULD END UP IN A SITUATION WHERE SOME PUBS ARE BEING REVIEWED MULTIPLE TIMES AS VARIOUS THINGS HAPPEN. IT ISN'T PRACTICAL.

AN ALTERNATIVE MIGHT BE TO ALLOW A TENANT TO SURRENDER/TERMINATE THEIR ARRANGEMENTS IN CERTAIN SPECIFIC CIRCUMSTANCES WHERE THE PUB BECOMES UNSUSTAINABLE FOR THE PUBLICAN.

IF THIS WERE TO APPLY THEN AS STATED ABOVE IT WOULD HAVE TO APPLY BOTH WAYS. THEREFORE IF THERE IS A CHANGE IN CIRCUMSTANCES WHERE THE PUBLICAN HAS RECEIVED A SIGNIFICANT BENEFIT THEN THE PUBCO SHOULD BE ALLOWED TO INITIATE A RENT REVIEW. IT HAS TO BE FAIR TO BOTH SIDES.

- 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.*

FOR THE REASONS ALREADY OUTLINED ABOVE THERE WOULD HAVE TO BE A VERY CLEAR DEFINITION ON HOW THESE CALCULATIONS WOULD BE DONE.

THE PUBCOS SHOULD BE ALLOWED TO GIVE A SENSIBLE FREE OF TIE OPTION, BUT THAT HAS TO BE BASED ON THEIR BUSINESS MODEL/COST OF CAPITAL ETC AND NOT AN ARBITRARY CALCULATION.

PUBCOS ARE INCREASINGLY OFFERING FREE OF TIE OPTIONS WHICH MAKE SENSE TO THEIR BUSINESS MODEL AND IN EFFECT IT IS TRADE OFF BETWEEN CERTAINTY/A FIXED COST (HIGH RENTAL WITH LOWER BEER PRICE) OR A MORE VARIABLE COST (LOWER RENTAL/HIGHER BEER PRICE).

IF THESE ALREADY EXIST THEN FURTHER REGULATION IS NOT REQUIRED.

- iii. *Abolish the gaming machine tie and mandate that no products other than drinks may be tied.*

NO. IT IS A FREE MARKET!!!! LET THE MARKET DECIDE ITSELF WITHOUT REGULATION.

LOTS OF PEOPLE ENTER A PUB AND NEGOTIATE WHAT THEY WANT THE ARRANGEMENT TO LOOK LIKE. JUST LIKE THE VALUE OF A HOUSE WHEN IT IS BEING RENTED OR SOLD, IF THERE IS GREAT DEMAND FOR THE PROPERTY THEN THE TENANT WILL NOT BE IN AS STRONG A NEGOTIATING POSITION AND THE LANDLORD WILL BE LOOKING TO MAXIMISE THEIR RETURN. WHERE DEMAND IS LOWER THE TENANT CAN NEGOTIATE A MUCH MORE FAVOURABLE POSITION FOR THEMSELVES.

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

NO. IT IS A FREE MARKET, LET THE MARKET DECIDE WITHOUT INTERVENTION.

- 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.***

NO. IN ANY ARRANGEMENT WHERE THERE IS SOME FORM OF TIED SUPPLY, WHY CAN'T THE SUPPLIER BE ALLOWED TO VERIFY THAT THE CONTRACT IS BEING ADHERED TO?

CLEARLY THIS COULD BE AVOIDED AS SOON AS EVERY TENANT GUARANTEES TO ADHERE WITH THE TIE. THE INNOCENT HAVE NOTHING TO LOSE FROM FLOW MONITORING

IF A TIE IS IN LEGALLY IN PLACE IN A CONTRACT THEN BUYING OUT OF THE TIE IS SURELY A CRIME? IF THIS APPROACH IS ADOPTED IT IS COMPLETELY AT ODDS ON HOW WE POLICE ALL SORTS OF CRIMES IN THIS COUNTRY. WILL WE CEASE ALL SURVEILLANCE BY THE POLICE FOR EVERY SUSPECTED CRIME? WILL SHOPKEEPERS NOT BE ALLOWED CCTV TO MONITOR FOR SHOPLIFTING?

- Q9. Are there any areas where you consider the draft Statutory Code (at Annex A) should be altered?**

YES – RELATING TO THE FREE OF TIE OPTION AND ALL OF THE OTHER COMMENTS ABOVE IT NEEDS RE-WRITING OR ABANDONING.

- 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?**

THE TIED PUB MODEL SEEMS TO HAVE BEEN REVIEWED ON AN ALMOST ANNUAL BASIS FOR A VERY LONG TIME. INSTEAD OF CONTINUALLY CHALLENGING AND CHANGING THE MODEL ALL TENANTS AND PUBCOS NEED TO HAVE A PERIOD OF STABILITY TO ENABLE EVERYONE TO FOCUS ON RESURRECTING THE PUB SECTOR!!

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?

Q13. Should the Government appoint an independent Adjudicator to enforce the new Statutory Code?

NO – THE VOLUNTARY CODE SHOULD BE ALLOWED TO CONTINUE AS IS. IF GREATER ENFORCEMENT IS REQUIRED IT SHOULD BE A LIGHTER TOUCH ENFORCEMENT ONLY INVOLVED WHERE ABSOLUTELY NECESSARY SO THAT ALL PARTIES ARE ENCOURAGED TO RESOLVE INDEPENDENTLY.

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

i. *Arbitrate individual disputes?*

SUBJECT TO MY ANSWER TO Q13, YES BUT ONLY AFTER ALL OTHER AVENUES HAVE BEEN EXHAUSTED.

ii. *Carry out investigations into widespread breaches of the Code?*

SUBJECT TO MY ANSWER TO Q13, POSSIBLY – BUT WHO DEFINES WHAT IS WIDESPREAD?

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?*

SUBJECT TO MY ANSWERS TO Q13 AND 14 YES. HOWEVER AGAIN THE QUESTION IS BIASED. IF THE TENANT IS AT FAULT/BEING UNREASONABLE NOT THE PUBCO THEN ANY ACTIONS MUST BE ENFORCEABLE ON EITHER PARTY EQUALLY.

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

NO, THIS IS INFLAMMATORY AND UNDERMINES THE PUB SECTOR. HOWEVER IF ALLOWED THEN IT MUST APPLY TO ALL PARTIES NOT JUST THE PUBCO.

III. *Financial penalties?*

SAME AS ABOVE

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?

THIS WILL LEAD TO INCREASED COSTS TO THE CONSUMER ONE WAY OR ANOTHER. AGAIN IF SOME FORM OF CHARGE IS LEVIED THEN IT SHOULD EQUALLY APPLY TO TENANTS WHO ARE NOT ACTING IN ACCORDANCE WITH THE CODE OR ACTING INAPPROPRIATELY.

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