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**Sent:** 15 June 2013 01:21

**To:** Pubs Consultation Responses

**Cc:** HUGHES, Simon

**Subject:** completed survey

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
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**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****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?**

The statutory code should contain a provision that all agreements that contain tied provisions, whatever they are called, should be fair, reasonable, and comply with all legal requirements.

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

Tied licensees will be able to negotiate lower tied rents, as the current rents do not adequately make up for the inflated tied product prices. Lower rents mean higher net earnings for the licensee. The Impact Assessment indicates a best estimate that an average licensee's earnings would improve by £4000 annually. According to CAMRA recent figures, this amounts to an increase in earnings of about 40% for 60% of tied licensees. This could be an underestimate, and an improvement may be more in line with the higher estimate of £10000 annually on average. This kind of improvement will encourage entrepreneurial flair where it is currently lacking, reinvestment and training jobs. Most importantly, profitability will ease the closure of pubs and the business failure rate of tied publicans.

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

Self regulation has so far delivered nothing by way of material reforms. The new proposed self regulatory board does not share the same commitment as the government, which is to make things fairer, and a tied licensee no worse off than if they were free of tie. Self regulation is not accepted as 'independent' by many licensees. Until the proposed board can commit to the same objectives for reform, it has little future.

**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*****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.*
- 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.*
- iii. Abolish the gaming machine tie and mandate that no products other than drinks may be tied.*
- iv. Provide a 'guest beer' option in all tied pubs.*
- 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 to all five.**

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

- 1. There needs to be a Market Rent Only option – where a licensee can choose to remain tied or simply pay a market rent and purchase beer and any other formerly tied products from any source. Without this the rest fails.**
- 2. There needs to be a clause in the Statutory Code that all contracts will be fair, reasonable, and comply with all legal requirements.**
- 3. It should be made clearer that all rent assessments ( especially at rent review and lease renewal ) need to be undertaken on the basis that that RICS guidance should be interpreted on the principle that the tied licensee is no worse off than the licensee who is free of 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. The opportunity to review and amend was the main failing of the Beer Orders which led to unintended consequences which were not controlled. The Statutory Code and Adjudicator proposals seek to avoid this problem.**

**Q11. Should the Government include a mandatory free-of-tie option in the Statutory Code?**

**Yes. This is essential as it offers the opportunity for a licensee to sever unfair contract terms which are included in tied agreements. Without a free of tie option and an open market rent, the Code could be easily exploited.**

**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?**

**This is not an either/or deal. A package of reforms are necessary, and they should be set out in the Statutory Code. In addition, there should be a mandatory free-of-tie option with an open market rent. If the rent cannot be agreed between the parties, then it should be decided ( in accordance with the lease terms ) by an independent**

third party in accordance with RICS rent assessment guidance.

**Q 13. Should the Government appoint an independent Adjudicator to enforce the new Statutory Code?**

**Yes.**

**Q 14. Do you agree that the Adjudicator should be able to:**

***iii. Arbitrate individual disputes?***

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

**Yes to both.**

**Q 15. 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?***

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

***III. Financial penalties?***

***Yes to all three. But the Adjudicator will also need additional powers, similar to those given to the Office of Fair Trading to deal with unfair contract terms in consumer tenancy agreements, and essentially to have the power to rule that an unfair contract term is unenforceable.***

**Q 16. 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.**

**Q18 What, in your view, would be the impact of the levy on pub companies, pub tenants, consumers and the overall industry?**

**Pubcos and brewers are already paying for self regulation. The levy for a Statutory Code will reduce the funds for self-regulation, but the work of this regime will be dramatically decreased, as most complaints are from pub owning company licensees of the six biggest firms. The costs associated with the Adjudicator and statutory regulation will largely depend on the behaviour of the pub-owning companies; the worse the behaviour, the more complaints, the more work and the higher cost.**