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From: FARRON, Tim [tim.farron.mp@parliament.uk]
Sent: 13 June 2013 11:02
To: Pubs Consultation Responses
Subject: Response to consultation on Pubs
Attachments: Pub consultation response.doc

Please find attached my response to the consultation on Pubs.

Best wishes,
Tim

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04/12/2013



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 X
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

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 needs to contain a clear written guarantee that all agreements containing tied provisions, however these are defined in the agreement between licensees and pubcos, are fair, reasonable and in absolute compliance 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.

The key benefit will be an increased power for tied licensees to negotiate lower rents, to provide a balance to the current inflated tied product prices. Lower rents of course equate to higher earnings in net terms for the licensee. The Impact Assessment indicates a best estimate that the average licensees earnings would improve by £4,000 annually. According to CAMRA's recent figures this amounts to an increase in earnings of c40% for 60% of tied licensees. There is a view that this will be an under estimate and it is more likely to be an improvement more in line with the higher estimate of £10,000 on average. This kind of improvement will encourage entrepreneurial flair where it is currently lacking, reinvestment, training jobs, and most importantly profitability will ease the closure of pubs and business failure rate of tied publicans.

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

Thus far, self regulation has failed to achieve anything close to the aim of the Government's proposals. At present, self regulation is not considered genuinely independent by the vast majority of licensees, where a new regulatory body would be unencumbered by the same commitments as Government or pub-owning companies, and simply seek to achieve a situation where tied licensees are no worse off than those free of tie.

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?

There must be a 'Market Rent Only' option, where licensees can either remain tied or opt to pay an (independently determined if necessary) market rent to the pub-owning company, while purchasing beer and other formerly tied products independently.

Without this commitment the aims of the reforms will fail.

There needs to be a clearly stated clause in the Statutory Code that "All contracts will be fair, reasonable and comply with all legal requirements".

Finally, it should be made clearer that all rent assessments (especially at rent review and lease renewal) need to be undertaken on the basis that RICS guidance should be interpreted on the principle that the tied licensee is no worse off than the free of tie licensee.

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. I have been told by publicans that the opportunity to review and amend was the major failing in the Beer Orders, which led to unintended consequences being left uncontrolled.

The Statutory Code and Adjudicator proposals seek to avoid such gaming of well meaning Government intentions.

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

Yes. I think this is essential, as it provides an opportunity for the licensee to sever unfair contract terms presented in tied agreements. Without a Free of Tie option and an open market rent, the code can be too 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?

Many publicans feel this does not need to be an 'either or' deal. A package of reforms are necessary, and are all outlined in the proposed Statutory Code with the exception of what I consider to be the most important; a mandatory free-of-tie option which offers the licensee the chance to pay an open market rent. If the rent cannot be agreed between the parties then it should be determined (in accordance with the lease terms) by an independent third party in accordance with RICS rent assessment guidance.

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?

Yes

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

Yes

III. Financial penalties?

I feel that the Adjudicator's powers need to be beefed up to the point where they have the power to render un-enforceable any term within a given contract which they have deemed to be unfair. Such a power would be similar to those of the OFT in the case of Unfair Contract Terms in Consumer Tenancy Agreements.

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?

Yes

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

The present system of self regulation already costs Pubcos and brewers, although admittedly the levy has the potential to see these costs increase. However, the strong likelihood is that an effective regulatory regime established in statute would reduce the level

of complaints and thus the associated costs of regulation. Most complaints are from pub owning company licensees of the six biggest firms, so the costs associated with the Adjudicator and statutory regulation will depend wholly on the behaviour of Pubcos. Worse behaviour will lead to more complaints, a greater workload for the regulator and thereby higher costs. Full compliance with a fair code will lead to minimal work for the Adjudicator, thus lower costs through the levy.