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Sent: 11 June 2013 11:05
To: Pubs Consultation Responses
Subject: Pub companies and tenants - response



Department for Business, Innovation & Skills
and tenants - A government consultation

**Pub
companies**

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): Member of Parliament; former chairman of BIS select committee

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.

500 is an appropriate threshold

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?

No response

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

There will be enhanced compliance costs for the Pubcos but the distribution of power is so uneven in the commercial relationships between them and their publicans that this is a reasonable price to pay for change

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

It has failed.

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.***

All these provisions should be included

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

No response

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. This is a vital component of the new arrangements

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?

No

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?

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?

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

III. Financial penalties?

Yes

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

No response

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; see answer to question 5

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