



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):	

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?**

As a libertarian, I am generally not in favour of such things but in the current climate, where large pub companies appear to act more as property developers than guardians of prized national assets, I think that there is, sadly, no alternative.

### **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.**

To start with, 500 is probably a sensible number although the government should consider ways of framing the code in such a way that the number could be lowered relatively easily, should companies begin to behave in ways designed to circumvent that figure.

### **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?**

They should be covered in the same way. A company which operates over 500 pubs under franchise is just as likely to behave in an anticompetitive fashion as a owning company.

### **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 benefits are that more pubs will be viable enterprises and will therefore be more likely to remain open to serve their local communities. The number of pub closures at present indicates quite clearly that this is not happening at the moment. In addition, pubs such as The Wheatsheaf in Chilton Foliat, Wiltshire which has suffered for years under both Greene King and, more recently Admiral Taverns, will have a greater chance of thriving. Because of high rents and restrictive practices, The Wheatsheaf has had numerous changes of tenant over the years, to the great detriment of its viability.

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

Over the years, pub companies have shown themselves to be untrustworthy so self-regulation would not change anything.

### **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*

Those seem to be reasonable principles. I would add that tenants should be able to operate in the way they think fit without undue pressure to conform to the owning companies directives.

**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.

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

Not at this time.

**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, and the review should also allow for the overarching principles to be amended and/or enhanced if that would improve operation of the Code.

**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?**

Not at this time.

**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?**

There is a danger that, unless supported by a large staff, such investigations would tend to overshadow individual disputes. As an organisation with a large staff would inevitably cost a considerable amount of money, and as the government is considering funding by way of an industry levy, the greater the cost, the greater the burden on the tenants or their customers who would inevitably foot the bill. For that reason I would be reluctant to see this wider power, at least at the outset.

**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?**

All should be available and be dependent on the breach.

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

Yes, although there should be provision for these to be amended in light of experience.

**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?**

The pub companies would inevitably pass the costs on to the tenants who, in turn, would be forced to build such costs into their business model which would lead to higher prices for the consumer. Please also note my answer to question 14.

I am not convinced that the proposal to charge malefactors a greater proportion of the levy is the most appropriate approach. It seems to me that use of financial sanctions would have a more immediate impact on transgressors. It may be that the government's proposal could more usefully be applied over the long term i.e. only when there is evidence of serious and continuing breaches over several years.