



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): Specialist Licensed Business Transfer Agent

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. All Pub Companies**
- 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? In the same way.**
- Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence. It will cost the pub co.s and benefit the tenants.**
- Q6. What are your views on the future of self-regulation within the industry? 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 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? Yes. The Code should take into account the whole rent review/assessment process and in particular should include the discounts received by the Pub Co's and look at the total income generated at each site. For example a pub selling say 200 Brls beer p.a. with a turnover of say £300,000 ex. VAT p.a. might have a Divisible Balance (net profit before rent, owners drawings, finance charges**

and depreciation) of £60,000. If as a tied pub the tenant paid a rent of 45% of the Divisible Balance the rent would be £27,000 p.a. The tenant would therefore get £33,000 p.a. However the Pub Co in addition to their rent of £27,000 would get discounts of over £200/Brl. ie. an additional £40,000 + giving the Pub Co. a total income of £67,000 or 67% of the £100,000 generated by the site. For the tenant to only receive 33% is inequitable and I believe the major cause of the lack of investment in the UK pub stock and the main reason for the failure of so many pubs.

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

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? Yes – see answer to Q 9 above

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? Yes

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 What, in your view, would be the impact of the levy on pub companies, pub tenants, consumers and the overall industry? It might reduce the return to Pub Co shareholders