



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): Accountant

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. Fair rents assessment should be applicable to all tenanted pubs, irrespective of company size. But (to be practical) say binding on companies with more than 100 pubs.

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? Franchises (i.e tenant's income computed as a simple % of turnover) are easier to understand and need not be included so long as the franchisee is able to terminate his/her franchise with 3 months notice.

Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence. Unfair rents are the single biggest problem for the pub tenanted sector. Fair rents assessment (with a minimum earnings specification)(£20,000 pa) will bring enormous benefits in terms of stability and better morale within the trade – as well as financial.

Q6. What are your views on the future of self-regulation within the industry? The major PubCos' policy of systematic exploitation of their tenants has not changed at all. However, the threat of a PIRRS application HAS made a big difference and has given a measure of power back to the tenant. It would be nice to see that process further strengthened and used much more widely under the supervision of the adjudicator.

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 ABSOLUTELY.*

ii. *Principle that the Tied Tenant Should be No Worse Off than the Free-of-tie Tenant. ABSOLUTELY.*

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. At any time, if the tenant can show that his FMT net profit is less than the rent.*

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. Proper assessment of FMT and running costs are the main items. Combined with rents then based generally on 33% of FMT net profits if the tenancy is substantially tied in any way at all.*

iii. *Abolish the gaming machine tie and mandate that no products other than drinks may be tied. No, I believe that machine income is best managed by*

professionals to the (equal) benefit of both Landlord and Tenant. Machine income is a fickle business wherein the risks are best shared (equally) rather than rented.

- iv. Provide a 'guest beer' option in all tied pubs. Traditional cask ale only.*
- 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. Only if substantiated by stock counting. And no flowmeter on the guest ale.*

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

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. Of course.

Q11. Should the Government include a mandatory free-of-tie option in the Statutory Code? No, but review after three years.

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? Most unfair rents are experienced at the lower end of the pub estates. Rents should be set at 33% (not 50%) of FMT net profits (as they once were) and there should be a recognized minimum tenant's income expectation of £20,000 pa (unless the tenant waives that requirement).

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, on rents only required.*
- 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 and Praise!.*
- 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? What, in your view, would be the impact of the levy on pub companies, pub

tenants, consumers and the overall industry? The levy should be based on a fixed % of the Company's total rent income (0.5%?). That could be easily computed and shared (where appropriate by the (grateful) tenants as part of the rent assessment process.