



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 <input checked="" type="checkbox"/>
Trade Union <input type="checkbox"/>
Interest Group <input type="checkbox"/>
Small to Medium Enterprise <input type="checkbox"/>
Large Enterprise <input type="checkbox"/>
Local Government <input type="checkbox"/>
Central Government <input type="checkbox"/>
Legal <input type="checkbox"/>
Academic <input type="checkbox"/>
Other (please describe): <input type="checkbox"/>

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

## Consultation questions

### Need for reform

Both organisations back the Select Committee's insistence (now backed by Ministers) that a statutory code of practice with a genuine free-of-tie option and both have stressed the huge opportunity that exists through this to allow the pub lessees/tenants, the small businesses and the ones that actually operate the business, to innovate and thrive.

### Positive impacts for the sector, for business and the economy: -

**Market Rent Only (free of tie option) reduces Adjudicator work load offering a self policing opportunity at an individual pub level** - A 'market rent only' option, available to tied lessees and tenants, would enable individual operators to compare and contrast their tied agreement with the circumstances and profitability of being free of tie. ***It is the terms of the tied agreements, if perceived to be unfair and unreasonable that will result in tied operatives choosing to release themselves of the burden of being tied.*** The threat alone of this flexibility will ensure that those pub owning companies operating tied agreements will seek to maintain fairness and competitive behaviour rather than using their inflexible models as a tool to oppress their licensees.

What will this mean for pubs and for the country?

- A fair deal will result in the average tied pub being £4,000 better off annually.
- This will allow many pubs to survive and thrive and to continue to contribute to their communities and the economy encouraging investment and more jobs.
- Currently pubco tied pubs cannot deal direct with their local brewers. A market rent only option would lead to better and fairer access to the pub market for small brewers and cider producers which will increase consumer choice.
- It would allow publicans and their families to earn a living, often denied to them by pubcos taking the lions' share the pub profits.

#### **Q1. Should there be a statutory Code?**

The Forum of Private Business believes the self-regulation option is inadequate to protect many pubs. It therefore supports the introduction of a statutory code. Such a code can free up the sector to grow.

The pub sector is an agglomeration of small businesses and freed from current restrictive practices, could not just help employment and local growth, but re-establish itself as the heart of many local communities.

#### **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.**

In light of insufficient evidence of abuse below this level the Forum of Private Business supports the 500 pub 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?**

That the code would apply to any company owning 500+ pubs to any non managed pub (tenanted/leased/franchised) they own.

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

If pubs can be made into more profitable businesses through the introduction of a statutory code which upholds the principle the tied tenant should be no worse off than the free-of-tie tenant it will have a beneficial impact on local economies. Increased employment, tax revenues and the maintenance of a community hub are all positive outcomes of the government's proposals.

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

Survey evidence shows the code is not working for all tenants in practice. The Government should review the implementation of an adjudicator after a year to decide whether it is desirable that the remit is extended or the threshold lowered.

**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, the Forum of Private Business believes these are appropriate.

**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.*

As a key supporter of the Fair Deal for Your Local campaign we believe the best way to ensure a fair deal for pubs – and to deliver the Government's clear commitment - is to include in the statutory code an option for tied publicans to only pay a fair, independently assessed market rent to the pub owning company - a 'market rent only' option. This is a simple, cheap to

administer and market based solution that would simply give tied licensees the choice as to whether to pay fair rent only or a lower rent and higher beer prices.

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

The Forum of Private Business has received no additional recommendations from members.

**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?**

It is vital that the industry is regulated in the most appropriate way. If further, new opportunities come about that will likely have greater benefit then it would be foolish not to implement those.

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

Yes, this should be included.

**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?**

We feel the current proposals should be implemented before further ideas are put forward.

**Q13. Should the Government appoint an independent Adjudicator to enforce the new Statutory Code?**

The Forum of Private Business strongly supports the implementation of an independent Adjudicator.

**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?***

Both of these should be in the Adjudicator's remit. There is a strong case for the Adjudicator approaching representative bodies to seek further case studies where widespread breaches are occurring.

**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?***

The Forum of Private Business supports all of the outlined measures. The case for financial penalties is markedly similar to the argument around the Groceries Code Adjudicator. Then, it

took a markedly long effort to persuade the Government to present the Adjudicator with fining powers from the start, so we urge them to maintain this power within the process of setting up the Pubs adjudicator. Because the power is there does not necessitate its use. A fair-minded Adjudicator can determine when it is appropriate. But its mere presence will help ensure the Adjudicator is taken seriously.

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

The Forum of Private Business supports the proposals.

**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 Forum of Private Business supports the proposal. However, there must be a clear incentive for the costs on a company to reduce if it improves its conduct and commits fewer breaches.