

13 June 2013

Pubs Consultation  
Consumer and Competition Policy  
Department for Business, Innovation and Skills  
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Dear Sirs

#### **Pub Companies and Tenants – Government Consultation**

We refer to the above consultation and attach our response to the consultation questions.

BACTA is the largest Association in the gambling sector representing arcades, amusement machine suppliers, distributors and manufacturers. BACTA is responding to the consultation by making general comments concerning the consultation, but wishes to note that there is no uniform view regarding responses to the consultation questions from an industry perspective.

Some members believe that the current arrangements regarding the “machine tie” provide substantial benefits to the tenant, to government, the Exchequer and to regulatory and licensing authorities including the Gambling Commission because they argue the following:

- In order for a machine supplier to become approved the Pub Companies establish through a thorough and professional tender process the legal and compliant status of suppliers. In this way a tenant has the confidence that by selecting a supplier from an approved list that the supplier is a ‘fit and proper’ company to deal with, has the requisite gambling licences, is run by ‘approved and licenced’ executives and ensuring the three main principles of the 2005 Gambling Act are upheld.
- Removal of the machine tie could open up the pub market to ‘rogue’ and ‘illegal’ operators who could cut corners by, for example, operating without the required licences, supplying dangerous and poorly maintained equipment with illegal software or operating machines outside of stake and prize controls.
- The standards of performance which are required under the current contractual arrangements ensure that all tenants receive the same level of service and operational support, including in relation to security to protect machines which would no longer be guaranteed without the machine tie. Removal of the machine tie and associated central management of standards would result in a serious decline in new machine purchases.
- Removal of the machine tie would encourage illegal operators which would distort the market and result in significant job losses, and impact revenue to the Exchequer collected through Corporation Tax, Machine Games Duty and VAT.

badly needed. These arguments include:

- The machine tie allows large pub companies to abuse their position to the detriment of tenants. Those in favour of change argue that reform would increase fair competition to the benefit of tenants.
- All legal machine suppliers are required to be registered with the Gambling Commission and are listed for inspection on their central database via the Gambling Commission website. A pub tenant can therefore easily check that whoever supplies their machines is compliant with the Gambling Act 2005.
- They cite the views of The Liberal Democrat MP Greg Mulholland, who leads the all-party Save the Pub group, and has campaigned for legislation to stop what he calls wholly unacceptable rents. Mr Mulholland believes that "The problem here is the large pub companies in this country are based on a business model of taking more than is fair and reasonable in pub profits".
- Some members believe that reform of the existing arrangements are urgently needed to help safeguard the future of many thousands of valued community pubs.

All members are concerned about increased bureaucracy and expressed the fear that the appointment of a statutory adjudicator could cause unnecessary additional financial burdens, red tape and promotion of the quango culture. Some members, however, believe that a statutory regulator will be necessary in order to address the issues which are referred to above, while others feel that a voluntary system can be made to work.

The structure of the consultation might result in a failure to address detailed practical issues because the focus is upon the threshold question of whether or not reform is necessary or desirable. The consultation document attempts to deal with the supplementary issue of the detail of any statutory code. There is a strong argument that this attempts to pre judge the result of the consultation and there is a danger that stakeholders will not engage with the detail until there is a clear decision on the primary question of whether or not a code is to be introduced. We therefore have submitted that the fundamental question of whether or not a statutory code is introduced is first determined before there can be an effective consultation on the substantive issue of the content of any code.

We have therefore encouraged our members to make individual responses, providing evidence for their perspective regarding the merits of government proposals.

Please acknowledge receipt of this response.

Yours faithfully

**Leslie MacLeod-Miller**  
**Chief Executive**

**Q.1 Should there be a Statutory Code?**

We believe that a Statutory Code should only be implemented if it is guaranteed to be effective and proportionate. In particular it should not impose a greater regulatory, administrative and financial burden upon the industry than is absolutely necessary. If a Statutory Code is introduced it must be only after full consultation with the industry and must be sufficiently flexible to address any harm or inequality which is targeted without introducing a costly compliance regime. Rather than consulting on the Code at this stage, the threshold question should be addressed as to whether a Code is required and a Code consulted upon separately. The appointment of an inexperienced adjudicator or regulator in other industry sectors, such as the gambling sector, has caused an enormous amount of industry and public concern. Lessons should be learned from these experiences to ensure every adjudicator comes with relevant expertise and acknowledged industry and public standing. There should be appointed an industry advisory group to the adjudicator to ensure that decisions are properly informed with a full appreciation of the practical ramifications both of the Statutory Code and the manner in which the adjudicator undertakes the enquiries. Due to the sensitive nature of compliance such a system must be able to deal with complaint which arises from competitive issues rather than genuine matters to be investigated.

**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 supporting evidence.**

We make no comment on the number of pubs to which the Code should apply, other than to note that the Code must be applied consistently to address matters which genuinely distort the competitive market. While we note that significant fewer complaints appear to be made below the level of 500, the government must enquire regarding the reason for the smaller number of complaints before the threshold is set.

**Q.3 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?**

No comment.

**Q.4 How do you consider that franchises should be treated under the Code?**

No comment.

**Q.5 What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence.**

No comment.

**Q.6 What are your views on the future of self-regulation within the industry?**

We believe that self-regulation should continue to be encouraged on the basis that it provides both flexibility and a cost effective solution, provided that industry codes are consistently enforced. We therefore support the continuation of a variety of dispute resolving mechanisms in addition to the proposed adjudicator.

**Q.7 Do you agree that the Code should be based on the following two core and overarching principles?**

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

We make no comment other than to observe that a lack of clarity can lead to confusion and waste of resource. It should therefore be necessary to include practical examples of subjective concepts such as fairness and being 'no worse off'.

**Q.8 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*

We submit that the Code should be separately consulted upon.

**Q.9 Are there any areas where you consider the draft Statutory Code (at Annex A) should be altered?**

We submit that the Code should be separately consulted upon.

**Q.10 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?**

We submit that the Code should be separately consulted upon.

**Q.11. Should the Government include a mandatory free of tie option in the Statutory Code?**

We submit that the Code should be separately consulted upon.

**Q.12 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 submit that the Code should be separately consulted upon.

**Q.13 Should the Government appoint an independent Adjudicator to enforce the new Statutory Code?**

See comments above.

**Q.14 Do you agree that the Adjudicator should be able to:**

- i. *Arbitrate individual disputes?*

ii. *Carry out investigations into widespread breaches of the Code?*

No comment.

**Q.15 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?*

No comment.

**Q.16 Do you consider the Government's proposals for reporting and review of the Adjudicator are satisfactory?**

No comment.

**Q.17 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?**

No comment other than to observe that in many other areas of regulation there is an inordinate additional financial burden because of the failure of new regulators to be properly advised by the industry and deal with demonstrable failures of the current system. There is a current tendency for new regulators to conduct a worldwide search of regulation from jurisdictions which do not map congruently upon the structure of the existing UK position. Not only does this cause disproportionate delay, but increases bureaucracy in an attempt to become 'future proof'. Initial requirements should be informed by dealing with quantifiable defects in the existing system and be periodically reviewed by an expert industry advisory group which would allow the system to evolve alongside changes in the industry.