



## 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): Pub Lessee

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. The pubco's have had years and cannot agree to a voluntary code.
- 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. The threshold should be reduced to say 100 pubs as the pubco's will tinker to reduce/split their estate just as happened when past legislation restricted brewers owning/controlling large numbers of pubs thereby creating the pubco's
- 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?
- 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 the Code in Q7 is adopted, then tenants will feel more secure in investing in their pubs to improve them. Rental/tied price levels will be controlled and overseen to ensure fairness.
- Q6. What are your views on the future of self-regulation within the industry?
- 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, absolutely*
  - ii. *Principle that the Tied Tenant Should be No Worse Off than the Free-of-tie Tenant Yes, 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. 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. We have a number of small and micro-brewers in the area and we would love to buy local products and support them (as would our customers).*
  - 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. Not sure, but it is intrusive.*

**Q9. Are there any areas where you consider the draft Statutory Code (at Annex A) should be altered? Fixtures and fittings is a very grey area and is often abused by the pub owners. Tenants should feel secure that money they invest with a view to increasing the pub's trade is reimbursed fairly if the tenancy concludes. At the moment the big pub companies ride roughshod over the tenants.**

**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 it should be as the pubco's will strive to gain back any losses by taking other measures.**

**Q11. Should the Government include a mandatory free-of-tie option in the Statutory Code? Yes, if arbitration fails.**

**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? As above Q19 answer. Check how the companies view laminate flooring and carpet. One is a fixture and fitting, the other is not. At the end of the tenancy the lessee should get fair reimbursement for improvements he has carried out at his expense.**

**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? Should cover other areas where abuse may occur as described above. Pubco's are loath to repay bonds etc etc. They should be treated like the private landlord sector – bonds/deposits etc should be protected and kept separately and repaid in full unless they can prove fraud or other misdemeanour by the lessee.**

**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? Good idea. I would even agree to a small levy on all pubs as this will help us all.**