



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

RESPONDENT:

small business owner of three pubs, two of them tied; employer of 100 people directly, and up to 500 indirectly. Responding as an individual.

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):

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

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 that tie in product should be bound. I have a direct comparison as one of my pubs is free of tie, and two are tied.

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?

If they are tied to buy products from their landlord, and if severe penalties are in place if they do not buy products from their landlord, then this franchise agreement will be abused by the landlord, as has been the case in England for decades. Therefore, the code must apply to this arrangement.

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

Nothing could benefit this sector more than this code. The people who do the work and drive the industry are the ones that are being abused by their landlords.

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

Self-regulation cannot work, as maximising profit is natural in business. The recent recession has proven that governments must be involved in regulation, otherwise abuse is a given.

Star Pubs & Bars have flown under the radar when it comes to highlighting the exploitation of tenants. They have now evolved into an even more exploitative model than Punch or Enterprise.

Heineken who owns Star Pubs & Bars bought 900 pubs from the taxpayer (Royal Bank of Scotland) for £420 million. One would have thought that Heineken would not mark up the tied products, that they own and brew, as much as other pub companies who have to buy the very same products from Heineken.

But alas, this is not the case: Heineken marks up their products for their tenants by the same amount as if one was buying Heineken products from Enterprise or Punch or Greene King etc.

What this means, is that they are just copying the price point of the pub companies that have over-borrowed billions of pounds prior to the recession.

This is just pure profiteering. They are passing nothing on to their tenants whatsoever and in fact are exposing themselves as the worst landlords of all.

This is an example of how self-regulation does not work.

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* ✓

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.* ✓

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

All we have to achieve in law is the principle that the tied tenant should be no worse off than the free of tie tenant.

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?

Pubcos are extremely tricky organisations who do not care for their tenants in any way, shape or form. I have many friends, who are free-of-tie landlords, who care more for their tenants than any of the people of power from the pub companies. The very nature of this arrangement creates abuse of the tenant. Therefore, there has to be a mandatory free-of-tie option as option b above will be outmanoeuvred by tricky agreements and bullying tactics as has always been the case.

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

Yes, without a shadow of a doubt, otherwise we have got nowhere.

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, most definitely as the pubcos will penalise a so-called "partner" as they like to call us in the blink of an eye with no mercy whatsoever.

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

Yes, I think the proposed accountability clauses are excellent but the government must remember that the pubcos will try and work out ways around everything in order to continue the exploitation of the tenant. Therefore, the code must retain the ability to add in avenues to stop the clever ways the pub companies and their lawyers come up with to continue to exploit their tenant.

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?

Yes, I agree that the adjudicator should be funded by an industry levy. Abiding by the code should become a badge of honour for the pub companies to achieve. This should always be the case.

If they abuse the code, it should be published available to their new potential tenants doing their research.

Also, fines imposed for continued abuse should be far-far greater than a portion of the cost of the adjudicator annually, as it is possible that in some instances paying the fine is a lesser expense than complying with the code.

The pub companies should have to show clearly how paying for the adjudicator or any substantial fines is not passed on to the tenant/lessee in question or indeed to all of their tenants/lessees and subsequently the end user/consumer.