



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 <input checked="" type="checkbox"/>
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 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.

Yes, I think the threshold is correct at this level as the smaller pub companies own pubs that are the primary route to market for their product. Typically they adopt a more caring attitude toward their tenants because of that relationship and whilst beer prices may still be above the free trade price, rents are typically lower than the larger pubcos. I would compare their relationship more to that of any company that sells its product through its own retail outlets. In the case of Enterprise Inns the company is a property owner and merely a broker for the products. It is not involved in brewing or drinks production in any way. The threshold should be set so as to preserve the distinction between these very different companies.

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?

The same, as they are not dissimilar to the leasehold model.

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

The benefit to a leasehold pub, such as the one I have owned for the past years would be quite substantial. Set in a residential area a market rent would be far lower than the £ that I currently pay. Other small businesses in our area pay rents of around for the same square footage, whilst other pubs in the area pay £ to £. At one time our pub company wanted to increase our rent to £ and it was only when we insisted we wanted to go to arbitration that they backed down instantly. I estimate a market rent for my business to be £18 to 22k per annum if it were any other business. I buy brewers barrels of beer per year at my pub and all the product with the exception of wine is subject to tie, ie. Cask ales, keg beers, spirits, soft drinks, bottled beers and ciders and fab's. The difference in the free trade price and the price around £60 to £80 per keg/cask, ie around £230 per brewers barrel, representing an annual figure of As Enterprise have massive buying power the price they pay to purchase the product they sell on to my pub is undoubtedly lower than the free of tie price that I would be able to negotiate on my own so the margin for them is even greater. This therefore represents an annual income from my pub of over £100k with rent and beer combined. This compares to my annual profit which is in continual decline and now standing at around £ for the year ending This is the living wage that myself and my partner have to live on which means we will not be paying any

income tax. These proposals would undoubtedly give a pub such as ours a fighting chance of survival. The realistic chance of earning a modest income out of a pub would boost the trade as a career prospect for potential new licensee and help raise the calibre of applicant. Where once aspiring chefs, retired professionals and entrepreneurs wanted into the trade, it now sadly only attracts people who have no other career prospects and I have noticed a distinct down turn in the quality of licensees entering the trade over the last ten years and this has reflected on the quality of pubs. It is not only the cheap supermarket drinks, big screen TVs, the smoking ban and pricing that tempts people to stay in rather than venture out to their local pub, it is the fact that a lot of the pubs are not very good, due to lack of quality operators and lack of available funds to make them more habitable than the average customer's home. This can only be turned around by making the pub trade a viable career option and this is the major upside of the proposals.

The downside I can see is that if the measures were to come into force, the market may lose confidence in the pubcos and a company like Enterprise could take an instant and massive hit on its share price. Only a year ago people were buying the shares at 22p and now at around the 118p mark it is ripe for profit taking. This, coupled with the fact that the estate is massively over-valued could lead to the quick collapse of the company leaving thousands of pubs on the market. No one single buyer will step in under the circumstances and it could lead to the loss of more pubs and the collapse of both freehold and leasehold prices. This would be the ultimate irony for those who have worked hard and suffered all these years in a pub to come to sell and find the asset worthless in a flooded market. The other potential downside is that the major brewers, not having the massive bulk sales from these companies may raise prices and we may find we are in the same situation as we started.

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

The pub companies have demonstrated that they will not self-regulate on this issue and this is understandable because why would they be willing to voluntarily give up part of their income stream. Their estates are massively overvalued and funding, whilst still available, is expensive relative to interest rates. Like us they too have massive overheads and I think they have their heads still buried in the sand about the future. They firmly believe that all the pubs problems are due to tenant to leaseholder incompetence and where this is true they do not realise that this is of their own making. Where is it not true they fail to see that the market has changed and that they too, need to change if they are to survive. They will only grasp this fully if forced.

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

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.*

Yes

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

Not at this stage

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, it was the norm in the past to offer a guest beer and this has gradually been eroded so that most pubs are tied on all product. Where an option is offered, it is offered on an annual fee basis, eg Enterprise have offered us an option to buy free of tie soft drinks for an annual fee of plus VAT, which, if we were to take up would not be reversible. This is completely unviable in financial terms to our business but because it has been offered they would be seen to be voluntarily complying with the spirit of any code. The option should be mandatory and not have heavy, annual financial penalties to pay in lieu, as this is just rent/beer tie by the back door.

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?

No I think that complicating the issue further would dilute the effect and cause confusion. This has been a long time coming to this point and better to start with

strong but simple measures so that the true effectiveness can be accurately measured. If too many measures are implemented then we will not know which of them have been successful in the long term.

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?

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?

II. Requirements to publish information ('name and shame')

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?

Yes, the pub companies will view this as another unnecessary hindrance to their income but by making those who contravene the code pay more should incentivise them to act in accordance with the spirit of the code. Money is their only incentive.