



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

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 responses.

As I am a current Lessee of Enterprise Inns I am concerned that access to some of my responses may lead to repercussions for me and my business.

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.

I understand the reasons for setting the threshold at 500 pubs. However, given previous and current practises by the Pubco's I am concerned that new, smaller Pubco's could evolve as a consequence of the code and their tenants would not be protected. I would suggest that a distinction be made between Pubco's that brew beer and or are involved in some sort of 'Branding' of their establishments and Pubco's that are effectively Property Companies, with the Code covering ALL Property Company type Pubco tenants with concessions of size to the brewing/branding type. Consideration would have to be given to the possibility of the property company type acquiring micro brewers or a 'brand' purely to avoid the Code and necessary steps taken.

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?

I am not familiar with the franchise model, however if franchises within the pub sector were excluded from the Code I would envisage the Pubco's making this their standard operation, with pressure on existing tenants to convert to this model, so current practises could continue.

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

Based on my many years experience of dealing with Enterprise Inns any financial cost of the proposals would be passed on to the tenant. The actual benefits of the proposals to the tenants of pubs are immense. From a financial point of view they should keep a much fairer share of the money they actually earn. This would bring many out of their current desperate hardship, enable them to once again invest in their businesses and eventually pass down to the customer as prices artificially raised by the Pubco model levelled out between tied, managed and free trade pubs. The cost could prove to be the actual demise of the Pubco (though the current situation is clearly unsustainable and will eventually lead to this outcome) A future without the pubco's is hard to predict in terms of what would happen to the pubs themselves, but I would expect SOMETHING to evolve to fill the gap left and would expect exploitation of the tenants to be at it's core. As was detailed in the Consultation document, low levels of literacy and numeracy and actual business sense amongst tenants (Their skills tend to be far more 'people' focused) will always leave them open to exploitation.

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

Self regulation has been seen not to work within this industry, I believe the attitudes inherent within the industry between Pubco and tenant can only be changed by a Statutory Code.

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.

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 - I believe this would help the 'micro breweries' secure a local market for their product.

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. I know from experience that the accuracy of flow monitoring equipment is at best questionable. When we discontinued a product and stopped using a monitored line it took Brulines to suggest the equipment was 'malfunctioning' and come to try and repair it. I have also been told 'Off the record' by various Pubco representatives that it 'does not work' and yet it is still used to threaten tenants on a regular basis. For many years, before I knew it's accuracy had been questioned in court, I was frightened that if we upset our Pubco, or if they wanted us out of our pub for any reason, they would fabricate evidence from it to nullify our Lease.

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

My only concerns are that any loopholes in it would be found and exploited by the Pubco's, or that any changes made to it after the consultation process could be used for similar ends. I believe the Code should be kept as simple, clear and jargon-free as possible to make it understandable and accessible to all tenants. SCORFA especially is poorly defined and needs to be standardised in some way - perhaps on a sliding scale depending on each benefit actually enjoyed by a particular pub (ie beer discount, product support, training supplied) - to simplify the otherwise excellent rent review example. I am concerned SCORFA could be used to confuse 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 - as long as overarching principles cannot be changed.

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

Yes - as long as rent is calculated as shown in the rent review example. I recently discussed with an Enterprise Inns BDM changing my lease to a free of tie lease. My current rent as of is £ pa with barrelage to year end of brewers barrels). To the same year end we made a profit of just , and are suffering severe financial hardship. I was informed that Enterprise would expect to make the same amount of money from us free of tie as they did part tie and therefore based on the figures I have quoted the FOT rent would be approx £ pa - totally unviable as even with a GP of 65% and current rent removed from costs our projected profit for 2013 was just £ - reducing our profit to just £4,178.

From these figures it can be seen that Enterprise Inns made approx £ (rent/£ beer) from our business compared with our £ . Not exactly a fair share of reward. It is also clear that Enterprise is making £200 a brewers barrel on the beer we sell. If we bought the same beer from a typical wholesaler we would expect to pay approx £100 per brewers barrel less than we do from Enterprise.

On these figures it is hard to see how Enterprise could compensate their higher beer prices with a lower rent (we over pay for the beer by £ a year on top of the £ discount they have already received buying the beer) without the rent becoming negative - less than zero.

Of course if these figures are not actually true (my figures are and can all be verified by my audited accounts) then the BDM blatantly lied to me regarding a FOT lease, presumably to prevent me from pursuing the option. If there is a mandatory free of tie option in the Code my business, and others like me, should get a clear deal to chose.

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

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 - Financial penalties should include compensation for tenants involved in disputes where the Pubco is at fault. Measures should also be taken to ensure tenants pursuing claims should not be bullied or 'bought off' by Pubco's

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

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