



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	Tick
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. Enterprise Inns will do anything to get around this threshold. They will probably just split the company into smaller companies. You have to make it across the board. If a real traditional small brewer which only has a few hundred pubs and it would really hurt their business to have to give a free of tie option, then they could apply for an exemption from an adjudicator with real powers and backed by government. Make it up to the individual companies to prove their case instead of the other way round. I have been an Enterprise Inns Lease holder for nearly 20 years. I bought a lease which is nearly worthless now. They have driven me to bankruptcy once. I am about to go bankrupt again. I cannot give any supporting evidence as such but you are welcome to come to my pub and see my business for yourselves.

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? These are not real franchises. When I had one with Scottish and Newcastle pub enterprises it was just the same as a tenancy. Same people, same costs.

Q5. What is your assessment of the likely costs and benefits of these proposals on pubs and the pubs sector? Please include supporting evidence. This is a difficult one. As a lease holder my rent is double what it should be, but I still pay double for my tied stock from Enterprise Inns. I have a fully repairing lease and a historic pub. I spend more time doing repairs to this beautiful building than I do managing it. It would be great to have someone I come in and say that my rent has to be halved and I could buy my stock from anyone or from the pub company at a fair price, but in reality If all their pubs suddenly did this they would go into administration. They are heavily leveraged and nearly went bust while they were doing what they wanted to us. What happens to us all and our leases if the pub company folds? The pub sector will survive, it always does. But things will change dramatically as the pub companies change into something else. Whether they change into something better is down to how little wriggle room you give them with the proposed legislation.

Q6. What are your views on the future of self-regulation within the industry? Self regulation has helped to the extent that the pub companies have looked into what it would mean to them to change. And it frightens them. You can feel the difference with the way they treat you. They know regulation is coming. They are just trying to put it off as long as possible. Regulate now and get it over with.

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 So it hasn't been fair or lawful up to now then? The fact that you have to put this statement into a fact finding questionnaire is enough answer.*
- ii. Principle that the Tied Tenant Should be No Worse Off than the Free-of-tie Tenant. Again this is a difficult one. A small brewer should have the right to buy pubs and put their own beer in them. Personally I think this sort of arrangement should be with managers only. If a brewer wants to tenant out a pub then surly the onus should be on them to make it more attractive to the tenant to stock their beer because they are brewing it and are able to sell it to the tenant cheaper than buying in from outside. Just making a tenant buy beer from them at a normal price means they are making a profit and giving them an economy of scale which is where the real profit is. They are just being greedy. Pub companies don't brew beer, but they have tiny overheads. The problem they have is servicing their loans. Most of the owners of pub companies are a relic from the break up of the pub industry after the beer orders. These people know this industry inside out. They saw that there was an opportunity to build a business model on the fact that someone will always want to take a pub on. More than any other business you get people with absolutely no experience of the sector putting their life savings into a pub. You wouldn't believe how many people over the years have come to me asking for advice about a pub they have seen and think they would like to take over. My advice is almost always please don't put your money into this, you will lose your money. Not one person who didn't take my advice is still trading. The tie for a pub company is just about control. Its hard enough running a pub without it, with it is in another guise.*

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. Should be every three years but yes I agree.*
- 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. Anything to increase transparency is welcome. Something like a Zoopla website where prospective tenants could see what other people are paying for a similar pub. A sort of national map.*
- 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. This is a complex one. As I wrote earlier small brewers who brew real ale should be able to put their own beer in a pub. Though its hard to argue against one guest ale. It should be on a case*

by case basis but only with a pub owned by a brewer. Real ale and real cider should be exempted from the tie with any pub company. They have created a need for an industry body called SIBA which means that I pay even more for a local ale than I do from their own tied list, which is still double than the market price for a nationally recognized but less popular real ale. Considering they know this is the only growth sector we have as an industry this is plainly wrong. They say you can get an ale from their own list but these are not popular. People want to try local ales and ciders. Charging us extra for this is just

- 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. The fact that they can afford to pay and maintain this very expensive equipment shows the sums of money involved. It would not be worth doing if they were charging tenants and leaseholders a small premium on tied beers. They are often charging double the market price for tied products and then fining tenants thousands of pounds with no recourse to an outside arbiter when they find something wrong with their figures. Create an environment where this equipment is not required and you wouldn't need to ban it.*

Q9. Are there any areas where you consider the draft Statutory Code (at Annex A) should be altered? If you manage to get all of the proposals drafted through, it would bring about a sea change in the industry. The only thing I am worried about is what happens to people who sign new agreements now or have recently signed an agreement with terms which are going to be banned. Do existing agreements hold until term or do you start again with everyone. These proposals will not help me, though I welcome them for others coming through.

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 they should be reviewed every few years or there should be a tipping point of complaints which would trigger a review.

Q11. Should the Government include a mandatory free-of-tie option in the Statutory Code? Yes, this is the one thing that force the pub companies into treating us all better. Enterprise Inns have repeatedly told me that they will never countenance a free-of-tie option under any circumstance.

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? Pub companies should be fined if too many of their tenants go into administration.

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

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') They have no shame, but Yes.

III. Financial penalties? Absolutely, Yes.

Q16. Do you consider the Government's proposals for reporting and review of the Adjudicator are satisfactory? Yes, a little late but very welcome.

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 it shouldn't be funded by tax payers money. If these companies can pay millions for flow monitoring equipment then when you ban it they will have some spare cash. I would gladly pay towards a body which protects me properly and any fines could be put into the pot too. Its hard to feel any sympathy for the big pub companies, they have been over charging people for years and sent many ordinary people into bankruptcy. I would worry about what happens to individual tenants and leaseholders if one of the big companies went into administration, but anything is better than what we have now. You have to be careful that they don't just fragment themselves just to get around the proposals. Consumers will not suffer, if I had more money coming in and could buy my stock cheaper, I could transform this business, spend more on entertainment, decorating, new furniture, interesting and unusual ales and ciders from small brewers who love what they do. How can that be a bad thing. The industry needs to change for the better before we all leave and open a coffee shop.