



House of Commons

Business, Innovation and Skills
Committee

**Pub Companies:
follow-up:
Government Response
to the Committee's
Fifth Report of Session
2009–10**

Eighth Report of Session 2009–10

Report

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The Business, Innovation and Skills Committee

The Business, Innovation and Skills Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Business, Innovation and Skills. On 5 June 2009, the Department for Business, Enterprise and Regulatory Reform and the Department for Innovation, Universities and Skills become the Department for Business, Innovation and Skills. On 1 October 2009 the Business and Enterprise Committee was renamed the Business, Innovation and Skills Committee to reflect that change. The Committee retained the same membership as the Business and Enterprise Committee.

Current membership

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The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via http://www.parliament.uk/parliamentary_committees/parliamentary_committees

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at http://www.parliament.uk/parliamentary_committees/bis.cfm

Committee staff

The current staff of the Committee are: James Davies (Clerk), Ben Williams (Second Clerk), Aruni Muthumala (Economist) Louise Whitley (Inquiry Manager), Anita Fuki (Senior Committee Assistant), Eleanor Scarnell (Committee Assistant), Jim Hudson (Committee Support Assistant) and Laura Humble (Media Officer).

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Contents

	<i>Page</i>
Report	3
Appendix 1: Government Response	5
Appendix 2: Government support for community pubs briefing paper	7
Formal Minutes	12
List of Reports from the Committee during the current Parliament	13

Report

1. On 13 May 2009, we published our Report on *Pub Companies*,¹ which examined the relationship between the pub companies and their lessees. Our Report concluded that the industry had failed to make any meaningful reform since the Trade and Industry Committee's Report on *Pub Companies* in 2004.² We asked the Government to delay its response to give the industry the opportunity to respond and for us to assess its proposals for reform. We evaluated the industry's response through a second call for evidence and by holding a further oral evidence session with representatives of the Royal Institution of Chartered Surveyors, British Beer and Pub Association and the Independent Pub Confederation.

2. On 4 March, we published our follow-up Report on pub companies.³ On 19 March we received the Government's Response together with a briefing note from John Healey MP, the recently appointed Pubs Minister, on the Government's new community pubs strategy. The Government Response and the briefing note are appended to this Report.

3. We are extremely pleased that the Government has, as part of its wider strategy on pubs, wholeheartedly endorsed the recommendations contained in our Report. Indeed, we see its effective adoption of all of our recommendations, including:

- the future of the tie;
- the use of restrictive covenants; and
- the accuracy of flow monitoring equipment,

as a vindication of our hard work on this issue over the past two years—work which has been carried out in the face of vociferous and, on occasion, unacceptable criticism. We are particularly pleased that the Government has retained the option of a reference to the Competition Commission.

4. Our most recent Report set a June 2011 deadline for the industry⁴—a year after the codes are due to be implemented—to prove that it has delivered on its proposals for reform and to demonstrate that those reforms are working effectively. That deadline has now also been taken up by the Government. In its Response the Government makes the following commitment:

If the Business, Innovation and Skills Committee concludes by then that the code is not working as well as it should we will consult on putting the code on a statutory basis with effective enforcement.⁵

1 Business and Enterprise Committee, Seventh Report of Session 2008–09, *Pub Companies*, HC 26-I

2 Trade and Industry Committee, Second Report of Session 2004–04, *Pub Companies*, HC 128

3 Business, Innovation and Skills Committee, Fifth Report of Session 2009–10, *Pub Companies: follow-up*, HC 138

4 HC (2009–10) 138 Para 21–70

5 Page 6

5. We are grateful to the Government for its acknowledgement of the central role that we have played in driving forward reform of the industry. This commitment sends to the pub industry an unambiguous message that, should our successor Committee not be satisfied with the industry's measures in 2011, the Government will not hesitate to intervene.

6. We see the Government's Response to our two Reports as a vote of confidence in the select committee system. More importantly, we believe its Response is very likely to rebalance the relationship between pub companies and lessees in exactly the way we believed was necessary. We hope the industry will ensure the effectiveness of the steps it is taking voluntarily—if not the Government is clearly committed to act.

7. We consider this to be a significant achievement for our Committee and we look forward to our successor committee continuing our dogged pursuit of reform of the pub industry in the next Parliament.

Appendix 1: Government Response

1. The Government very much welcomes the Report and wishes to pass on its gratitude to the Committee for all their hard work and diligence over the past few years in arriving at such a valuable Report.
2. The Business, Innovation and Skills Committee Report makes a number of recommendations to the pub industry, the Government and to the Office of Fair Trading.
3. We very much hope that industry accepts the challenge that it has been set and works together in an effective and constructive way. In particular there is a special emphasis on the British Beer and Pub Association (BBPA) and the British Institute of Innkeeping (BII) in making sure that the Framework Code and the subsequent accreditation process works within the proposed timescales in a way that it is mutually beneficial to those across the whole industry. The Independent Pub Confederation (IPC) and the Royal Institution of Chartered Surveyors (RICS) also have a key role to play in ensuring a successful outcome.
4. You will be aware that the Government announced today a support package to provide practical help to community pubs during this difficult trading period. The package includes business support, industry standards and consumer choice and community and local authority action. The support measures included in the industry standards and consumer choice sections address the recommendations made to Government on Brulines and the effectiveness of the BBPA Framework Code. Please find attached a copy of the communication for your information. On the specific recommendations made to Government our response is as follows:

Recommendation

“The accuracy of data from flow monitoring equipment and the analysis of that data are highly contentious issues. Flow monitoring equipment could be a helpful tool, for both pub companies and lessees but only if it is reliable and has the confidence of both sides. Clearly this is not the case at the moment. We recommend that the Government, through the National Measurement Office, urgently clarifies the position of beer flow monitoring equipment in relation to the Weights and Measures Act 1985. Such equipment must be included under the Act for calibration and verification purposes”.
(Paragraph 69)

5. It is right that monitoring equipment of this type should be accurate and reliable. Government is clear that the industry should voluntarily ensure that all such measuring equipment is calibrated by the National Measurements Office. However should the industry fail to do so within a reasonable timeframe this will result in Government prescribing the equipment to ensure fairness.

Recommendation

“The industry must be aware that this is its last opportunity for self-regulated reform. If it cannot deliver this time, then government intervention will be necessary. We do not advocate such intervention at this stage, but remain committed to a resolution to all the problems discussed in this Report and those of the 2004 and 2009 Reports.

Should those problems persist beyond June 2011, we will not hesitate to recommend that legislation to provide statutory regulation be introduced”. (Paragraph 158)

6. In its support package communication Government has made it very clear that it accepts the Business, Innovation and Skills Committee recommendation for the effective operation of the British Beer and Pub Association Code of Practice on tenancies and leases. This is further backed up by a clear statement that Government gives the industry until June 2011 to improve. If the Business, Innovation and Skills Committee concludes by then that the Code is not working as well as it should we will consult on putting the Code on a statutory basis with effective enforcement. The Code of Practice should also incorporate a beer/non-beer tie option for tenants with a commitment that the Government will act if the industry does not. In addition the industry should introduce voluntary provision for tenants to offer a guest beer outside the traditional beer tie as part of the code with Government action to introduce an order if industry fails to act.

Recommendation

“We urge the Government to monitor the success or otherwise of industry initiatives for reform and to keep the possibility of a reference to the Competition Commission firmly on the agenda. We also urge the Office of Fair Trading to look more carefully at the issues involved as it responds to CAMRA’s super-complaint for the second time. The serious imbalance in power between pub companies and lessees that has prompted this Report and the two earlier ones must be a matter of deep concern to policy makers who are working to ensure that markets work fairly to the benefit of consumers”. (Paragraph 160)

7. Government will be doing what it can to encourage the various parties to work together over the coming weeks and months with the objective of reaching a situation where further government intervention is unnecessary. We intend to monitor progress at regular intervals.

8. At this stage the Government has not ruled out a reference to the Competition Commission.

9. The Office of Fair Trading (OFT) is consulting on its findings in response to the super-complaint lodged by CAMRA in July 2009. The OFT is inviting parties to comment on its findings.

10. The OFT will consider parties' responses to the consultation, including additional evidence as may be put forward as part of parties' representations, and pursue such further investigation as it considers appropriate, before publishing its final views regarding the super-complaint.

11. The OFT's examination of the beer tie following CAMRA's super-complaint will continue to focus on whether effective competition is delivering choice and value for consumers.

Appendix 2: Government support for community pubs briefing paper

1. The Prime Minister asked John Healey in January to lead work across government designed to help and support Britain's community pubs.

2. Community pubs include the traditional local pub and local membership clubs, which offer more than just a place to drink. In many communities across Britain the pub is the centre for social and recreational activity and a focus for local charitable activity. For many people the local pub is one of the things that helps define the place where they live. Pubs that people value for their importance to the community can be found all over Britain; in rural villages, suburban streets and in our town centres.

3. Yet, despite the place that the pub holds in British life, many are closing their doors. In February 2010, the British Beer and Pub Association (BBPA) published figures showing the number of pubs that had closed in the second half of last year:

- Pub closures are now running at 39 a week, down on the 52 pubs a week closing in the first half of 2009;
- Total of 2,365 pubs closed in 2009, and
- 24,000 jobs were lost in 2009, because of pubs closing.

4. It is not just pubs and clubs in rural areas that are under pressure but also those in urban and suburban communities.

5. There are a number of reasons why pubs and clubs are closing, such as the impact of the recession and legal changes, like the smoke free laws. Changing social habits also mean that fewer people are visiting pubs and clubs. The Government cannot try to reverse wider social and lifestyle changes and we are not able to support businesses that are fundamentally unprofitable.

6. To continue attracting customers, pubs and clubs need to offer more than just a pint. Pubs that diversify and extend the range of services they provide to the community are more likely to prosper than those that do not. We have heard from the licensed trade that rising costs are a key factor in closures and tenants and lessees argue that some profitable pubs are being closed down because pub companies want to profit from alternative uses for the pub's site. The Government can support pubs and clubs to make their businesses stronger and more diverse and seek to strengthen and support the pub industry.

7. To develop a comprehensive package of support for community pubs John Healey MP has worked closely with ministerial colleagues in the Treasury, the Departments for Culture Media and Sport (DCMS), Business, Innovation and Skills (BIS), Environment and Rural Affairs and the Ministry of Justice. The Government has taken account of findings of the BIS and CMS select committees and the work of the All-Party Beer and Pub Group as

well as holding discussions with pub companies, landlords, tenants and other groups directly involved in the pub industry.

8. Our plans fall into three main categories:

- Business support;
- Industry standards and consumer choice, and
- Community and local council action.

Package of support

1. Business support

Business support gateway services

9. 'Pub is the Hub' is a national advisory body which will act as the established first point of contact for landlords and tenants requiring access to expert business advice on a range of issues that they face.

10. 'Pub is the Hub' is a voluntary not-for-profit business support service, set up in 2001. Pub is the Hub has visibility and credibility with the industry and a track record of supporting over 300 pub-based rural services. With new government funding to establish seven full-time advisors, Pub is the Hub can extend their support nationwide, providing business advice directly themselves or directing pubs to Business Link or another agencies to get the best support for their needs.

11. To strengthen these links our intention is to put in place a formal arrangement between Pub is the Hub and the established Business Link service to underpin advice and support. The initial work on this arrangement should be completed as soon as possible and should result in a formal link between the two organisations. Our new funding for Pub is the Hub will be around £1 million over the next three years.

Community ownership support for 50 pubs over 3 years (through the Plunkett Foundation)

12. We will contribute to a three-year pilot programme to help up to 50 pubs move into community ownership through the Plunkett Foundation. This programme will provide support to local communities to be directly involved in creating and maintaining their community pub, so it can deliver the services and benefits they want. The Government will provide grant support to communities matched by loans from third-sector organisations and a contribution from the communities themselves. Funding for this programme will be £3.3 million over three years.

Support from Regional Development Agencies (RDAs) for community pubs

13. We are working with RDAs to ensure that Local Action Groups and local communities are aware of the benefits of community pubs and have all the information they need to

access the available funding under the Rural Development Programme for England (RDPE).

14. Defra and the RDAs will be publicising this widely through existing rural networks, including the RDPE National Rural Network managed by the Commission for Rural Communities.

Independent study of the pubs sector

15. We will commission an independent study of the pubs sector to establish ownership and management patterns, reporting to Government by the end of 2010.

Independent review of the issues affecting local membership clubs

16. Work on this review has shown that while pubs and local membership clubs face many similar challenges, there are pressures particular to working men's and other local membership clubs. Ministers in DCMS and DLG have therefore jointly commissioned Lord Turner of Bilston to lead a clubs review and to report to ministers in the two departments by the summer recess.

Skills plan for pub sector

17. Building on the research into licensed hospitality conducted by People 1st in November 2009, we will commission a one year on follow-up review of skills in community pubs. The review will be independently chaired by Chris Banks, Chair of the Learning and Skills Council.

18. The review will pick up skills issues arising in the BIS Select Committee Report on the pub industry, and will include:

- Provision of business management skills, particularly looking at community pubs, and
- Access to training and funding for SMEs/community pubs including the provision of on the job training.

2. Industry standards and consumer choice

Endorse the BBPA Code of Practice on tenancies and leases and commit to act if industry cannot show it is complying with the code.

19. The BIS Select Committee has recently completed an in-depth review of the relationship between pub companies and their tenants and published its Report. The Committee recommends the industry should have one year to fully implement their Code to ensure transparency and openness in setting contracts and leases.

20. We back the Committee's recommendation and the one-year deadline for the industry to show it is complying with its own Code. Government will monitor progress for one year and intervene to regulate by putting the Code on a statutory basis backed by an industry enforcer, if the industry fails to deliver.

Seek to strengthen the industry Code of Practice.

21. We will press the industry further to offer freedoms for tenants to offer consumers more choice as part of their Code of Practice. The Code of Practice should:

- offer tenants a tie/non-tie option to enable them to best reflect the needs of the community, and
- offer a guest beer option for those tenants that opt for a beer tie.

22. Government will monitor progress for one year and intervene to introduce a non-tie option and legislate for a Beer Order to allow guest beers if these flexibilities are not introduced.

Press the industry to regularise equipment which measures beer flow (Brulines) and intervene if industry fails to respond

23. We will respond to the industry concerns over Brulines—these are the flow measurement devices that ensure the tie contract is being observed and that the tenant is not buying beer outside the contract. The industry should voluntarily ensure that all such measuring equipment is calibrated by the National Weights and Measurement Laboratory. Failure to do so will result in Government intervening to ensure fairness by requiring that equipment is calibrated.

Amusement Machine Licence Duty (AMLD) review of skill with prize machines

24. Following recent discussions with the gambling industry regarding machines commonly referred to as 'skill with prize' (SWP) machines, the Treasury and HM Revenue & Customs (HMRC), in consultation with the Gambling Commission and the Department for Culture, Media and Sport, will undertake a review of SWP machines and the games played on them for the purposes of amusement machine licence duty (AMLD).

25. The Review will report to Ministers in July 2010, to allow time for discussion with the gambling industry and other interested parties.

Relaxation of licensing requirements for live music in small venues

26. The Government will amend the Licensing Act 2003 to make it easier for community pubs and other small venues to put on live music without the need for a licence, subject to the outcome of the ongoing consultation and with the consent of Parliament. We currently propose that events with an audience of 100 people or fewer would be exempt. The new exemption will allow community pubs, which have not already done so, to provide live music to small audiences without having to apply for a costly variation of their licences.

3. Community and local authority action

The Government will publish a planning brief for all local authorities setting out the flexibilities and protections available to pubs under the planning system

27. The Chief Planner will publish a planning brief promoting the flexibilities and protections currently available to pubs under the planning system and promote this through a letter to all local authority Chief Planning Officers. For example, the existing Use Class Order allows pubs to diversify into food or to incorporate a shop without the need to apply for planning permission. The planning brief will make such provisions better known and understood.

Control the demolition of pubs and clubs to allow community intervention

28. We will further strengthen the planning tools for local authorities by amending the Secretary of State's Direction to define as development the demolition of community pubs and working men's clubs which are not attached to dwellings. This will give the planning authority time to consider before demolition can take place whether to require the owner to submit a planning application for the site and so ensure that the community are fully consulted before a pub is lost.

Removal of restrictive covenants

29. The Ministry of Justice will consult to remove the right for pub owners to place covenants on the land when they sell sites to stop the site being used for a pub in future. This also responds to a proposal raised by local authorities under the Sustainable Communities Act.

Formal Minutes

Tuesday 23 March 2010

Members present:

Peter Luff, in the Chair

Roger Berry	Mr Lembit Öpik
Mr Brian Binley	Ian Stewart
Mr Michael Clapham	Mr Anthony Wright
Miss Julie Kirkbride	

Draft Report (*Pub companies: follow-up: Government Response to the Committee's Fifth Report of Session 2009–10*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 7 read and agreed to.

A Paper was appended to the Report as Appendix 1.

A Paper was appended to the Report as Appendix 2.

Resolved, That the Report be the Eighth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

[Adjourned till Tuesday 30 March at 10.00 a.m.]

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2009–10

First Report	The Creation of the Department for Business, Innovation and Skills and the Departmental Annual Report 2008–09	HC 160
Second Report	Committee Annual Report 2008–09	HC 195
Third Report	Exporting out of recession	HC 266
Fourth Report	Broadband	HC 72
Fifth Report	Pub Companies: follow-up	HC 138
Sixth Report	Full speed ahead: Maintaining UK excellence in motorsport and aerospace	HC 173
Seventh Report **	Scrutiny of Arms Export Controls (2010): UK Strategic Export Controls Annual Report 2008, Quarterly Reports for 2009, licensing policy and review of export control legislation	HC 202

Session 2008–09

First Report	Energy policy: future challenges	HC 32 (HC 317)
Second Report*	Pre-appointment hearing with the Chairman-elect of Ofcom, Dr Colette Bowe	HC 119
Third Report	Work of the Committee in 2007–08	HC 175
Fourth Report	Regional development agencies and the Local Democracy, Economic Development and Construction Bill	HC 89 (Cm 7463)
Fifth Report	The Postal Services Bill	HC 172 (Cm 7623)
Sixth Report	The Insolvency Service	HC 198 (HC 919)
Seventh Report	Pub Companies	HC 26
Eighth Report	Post Offices—securing their future	HC 371 (HC 1002)
Ninth Report	Automotive Assistance Programme	HC 550 (Cm 7706)
Tenth Report	Enterprise Finance Guarantee scheme	HC 588

** First Joint Report of Committee's on Arms Export Controls

* First Joint Report with Culture, Media and Sport Committee

Eleventh Report	Risk and Reward: sustaining a higher value-added economy	HC 746
Twelfth Report **	Scrutiny of Arms Export Controls (2009): UK Strategic Export Controls Annual Report 2007, Quarterly Reports for 2008, licensing policy and review of export control legislation	HC 178
Session 2007–08		
First Report	The work of the Committee in 2007	HC 233
Second Report	Jobs for the Girls: Two Years On	HC 291 (HC 634)
Third Report	Post Office Closure Programme	HC 292
Fourth Report	Funding the Nuclear Decommissioning Authority	HC 394 (HC 994)
Fifth Report	Waking up to India: Developments in UK-India economic relations	HC 209(HC 1006)
Sixth Report	After the Network Change Programme: the future of the post office network	HC 577 (HC 1091)
Seventh Report	Keeping the door wide open: Turkey and EU accession	HC 367 (HC 1070)
Eighth Report **	Scrutiny of Arms Export Controls (2008): UK Strategic Export Controls Annual Report 2006, Quarterly Reports for 2007, licensing policy and review of export control legislation	HC 254
Ninth Report	Construction matters	HC 127 (HC 1187)
Tenth Report	Post Office finance: matters arising from evidence taken on 10 June 2008	HC 662
Eleventh Report	Energy prices, fuel poverty and Ofgem	HC 293 (HC 1069)
Twelfth Report	Post Office Card Account: successor arrangements	HC 1052
Thirteenth Report	Companies House	HC 456 (HC 206 Session 2008–09)
Fourteenth Report	Departmental Annual Report and Scrutiny of the Department for Business, Enterprise and Regulatory Reform	HC 1116

** First Joint Report of Committee's on Arms Export Controls

** First Joint Report of Committee's on Arms Export Controls