

**Responses to BIS and Scottish Government Consultation on
Modernising Street Trading and Pedlars Legislation - Other responses
A to M**

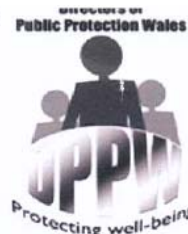
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ALL WALES LICENCING TECHNICAL PANEL

Delivered 8 February 2010

My Ref / Cyf DPPW/LTP/PS/BIS Response

Date / Dyddiad: 3 February 2010



Deba Hussain or Roger Denison,
Consumer and Competition Policy Directorate,
Department for Business, Innovation & Skills,
Bay 146,
1 Victoria Street,
London. SW1H 0ET

Dear Sir/Madam,

Re: Street Trading and Pedlar Laws.

I refer to your consultation on modernising Street Trading and Pedlar Legislation, and on draft guidance on the current regime.

On behalf of the members of the Licensing Technical Panel of the Directors of Public Protection in Wales I attach a completed questionnaire as requested.

I hope this information is of assistance. Please do not hesitate to contact me if you wish to discuss the matter or require any further details.

Yours faithfully,

A handwritten signature in dark ink, which appears to read 'Jim Sullivan', is positioned above the printed name.

**Jim Sullivan,
Chairman of the All Wales, Licensing Technical Panel.**

PLEASE REPLY TO: Licensing Technical Panel, Secretary Paul Shone, Cardiff Council,
City Hall, Cathays Park, Cardiff, CF10 3ND Tel (029) 2087 1651 Fax (029) 2087 1816
e-mail licensing@cardiff.gov.uk

Response to Questions Posed by the Consultation Document.

Certification Process

Question 1: Do you agree that the definition is in need of updating and clarifying? If not, please provide your reasons.

Yes.

Question 2: Do you think anything should be taken out or added to the list and why?

No.

Question 3: Do you think the permitted size of a trolley should be set out in the definition. Please provide reasons for your answer and an indication of any size you think appropriate.

Pedlars frequently use shopping cart type trolleys which are extended up from the trolley to provide an extensive area for the display of flags, scarves, mobile phone covers etc. The trolley causes nuisance and obstruction in densely used retail centres and especially when used by organised teams of pedlars on festive or event days who travel in convoy around the retail centres of towns and cities. If a trolley is permitted it should be used as a means of transportation only, should have no more than two wheels, be no greater than one metre in any dimension.

Question 4: Do you have alternative suggestions? Please provide them.

Pedlars should not be able to use a trolley within areas which are designated under street trading legislation.

Question 5: In your view, will updating the certificate as described above make verification and identification of lawful pedlars easier for enforcement officers? Please give reasons for your answer.

Providing an updated standardised secure photo identity certificate which provides verifiable details of the individual and their address would assist enforcement officers.

Question 6: In your view, is the list of information to be included in a modified certificate complete? If not, please state what information you believe should be added/removed and why.

The suggested information would be satisfactory.

Question 7: Do you think that a national database of pedlars' certificates will improve the current system of enforcement and certification?

A national database securely verifying the information provided on the certificate would be a useful tool in assisting enforcement officers given the national nature of pedlar activity.

Question 8: Do you agree that the list of information to be held on the database is complete and correct? If not, please state what information you would remove/add and why.

Information on the identity and address history of the pedlar, certificate history, offence details, details of the certificate issuing authority

Question 9: Would you support the reintroduction of certification for pedlar service providers? If so, please say why and provide any evidence in support of your view. If not, please say why.

Street Trading Legislation covers only trading in goods and provided that pedlars were required to comply with this legislation to avoid nuisance there would be no need to regulate the providers of services.

Question 10: Do you think the proposed criteria will offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a certificate?

Yes.

Question 11: Do you think the proposed criteria will lead to a more consistent approach to refusal of applications from issuing authorities?

Yes.

Question 12: In your view, should responsibility for issuing pedlars' certificates be transferred from the police to local authorities? Please give reasons for your answer.

Yes. Local Authorities have experience of dealing with a wide range of licences including those in respect of street traders. In addition to freeing up police resources it is appropriate that pedlar certification should also be administered by the local authority with the police used as a consultative body in line with the process used with other types of licence. Police officers and should be authorised to address nuisance issues as might Police Community Support Officers.

Question 13: Do you think that clear terms for refusal of applications in the legislation, coupled with a right of appeal, are sufficient safeguards to ensure a fair and non-discriminatory certification regime? If not, what alternative or additional safeguards do you think are required?

Yes clarification would provide sufficient safeguards and appeals mechanisms. It should be made clear however that pedlars have no automatic right to cause nuisance in places where their activities are inappropriate.

Question 14: What are your views on the above option, and how this might affect street trading or pedlar activity?

Revoking the Pedlars Act and introducing appropriate legislation by adapting the LG(MP)A would be appropriate. Both street trading and pedlary are complimentary activities and both should be regulated to ensure they do not cause nuisance or inconvenience to other users of the street.

The Act does not reflect the modern situation, there would be no need to revoke the Pedlars Act however if the LG(MP)A was amended so as to remove the exemption afforded to the holders of Pedlars Certificates. Provided pedlars did not use those areas of a town or city designated for the purposes of street trading the nuisance they cause would be substantially reduced.

Question 15: With further work, do you think this option is viable? Please give reasons for your answer.

To make the option viable it would be necessary for a local authority to limit the places where pedlars may trade. The current system of organised traders moving about within prime retail areas of town centres using pedlars certificates to evade street trading controls must be curtailed in the interest of preventing nuisance, unfair competition and protecting consumers.

Question 16: Are there other ways of maintaining the national access to pedlar certificates other than under the Pedlars Act?

Where an authority have chosen not to adopt the Act then street traders and pedlars would be able to carry out their activities at appropriate places within the local authority area.

Question 17: What are your views on the above option? Please give reasons for your answer.

Removing pedlars from regulation would be perfectly appropriate provided that local authorities had the ability to prevent their activities in places where they cause nuisance or inconvenience to other street users.

Enforcement

Question 18: Which of the above options do you favour?

Option D.

Question 19: Should Local Authority Enforcement Officers be given powers to:

- i) issue fixed penalty notices
- ii) seize goods, with forfeiture by order of the Court?

Please give reasons for your answer.

Yes. Enforcement of street trading legislation through the courts is an expensive and slow process. The issue of fixed penalty notices would be a more effective tool. However because of the nature of the activity financial penalties do not provide an effective deterrent and seizure of goods can be a more effective enforcement tool in certain circumstances.

Question 20: If you favour introducing new powers for local authority enforcement officers, can you provide evidence to support this view, particularly in terms of increasing the effectiveness of enforcement in this or other areas? If you do not support further powers, can you provide evidence to support this view?

Currently the licensing authority together with the police and highways officers mount special joint operations targeting the activity of pedlars at large sporting events, in the weeks prior to Christmas and regularly throughout the year to deter illegal street trading activity. However the requirements of the courts to produce detailed evidence of individual pedlars trading from a stationary period for an hour makes gaining sufficient evidence expensive and time consuming for officers. Processing of cases and having officers available to give evidence gives rise to additional expense and wastes resources. A more appropriate system for dealing with illegal street trading by the holders of pedlar certificates is necessary.

Question 21: Is the list of offences in respect of FPNs complete and correct? If not, please state which offences you would add or take away, and why.

During operations targeting nuisance hot dog sellers the authority and its partner agencies has seized trolleys under obstruction legislation and has found this to be an effective tool to deter illegal street trading activity. The increase in level of fines provided by the introduction of the Licensing Act 2003 also deterred illegal street trading activity at night. Increased financial penalties and seizure have been effective tools in tackling this nuisance.

Question 22: At what levels do you think the fixed penalties should be set? Please give reasons for your answer.

Illegal trading activity can be extremely lucrative. Pedlars prosecuted as street traders are not deterred easily by court fines and the authority is forced to apply for injunctions to curtail the nuisance by regular offenders. The limit should be set at a high level in order to provide an effective deterrent. A level 2 fine of £500 would be an appropriate level for a first time offender.

Question 23: Do you agree with the Department's general perception, as set out above? If not, please explain.

The general perception is correct. In addition local authorities spend a great deal of time and money on maintaining and improving town centre retail areas to present a image of the town or city that is harmed by the presence of often unkempt trolley wheeling pedlars. Local businesses object to the presence of pedlars on the grounds of the harmful effect on visual amenity.

Question 24: Do you agree that if provision for more enforcement options against illegal street trading and a sufficient demarcation between legitimate pedlary and other street trading was established (along the lines discussed elsewhere in this document) that this would address the issues of concern to some local authorities in relation to unfair trading and competition? If not, please explain.

On a day to day basis we do not see in activity taking place by the holders of pedlars certificates which could be described as legitimate pedlary. Traders in town and city centres hold pedlars certificates because of the exemption it affords from street trading controls.

Question 25: Do you agree that, in some circumstances, restrictions on the number of legitimate pedlars in specified areas and at specified times are justifiable? If not please explain why you do not agree.

Agreed. In particular pedlar activity should be restricted on the streets in the retail centres of large cities which have been designated as prohibited for street trading on the grounds that it can not take place without causing nuisance and obstruction to the masses of shoppers attempting to use the facilities provided.

Question 26: Do you agree that the list above illustrates the circumstances under which restriction on numbers is justifiable? Do you disagree with any of the listed circumstances, if so why? Would you add any circumstances to the list, if so, which and why?

The list of circumstances in which restrictions may be appropriate is agreed.

Question 27: Do you have any observations in relation to the ideas aired in the final paragraph above on methodology and notice?

Automatic restrictions should apply where streets have been designated as prohibited for street trading purposes. This would be clear and unequivocal.

Question 28: Should street trading appeals in London be determined by the Magistrates' Court or the Secretary of State? Please give reasons for your answer.

The right of appeal to the Magistrates Court provides effective safeguards which work well in authorities outside London.

Services Directive

Question 29: If you are aware of any evidence to suggest that the conclusions set out above do not reflect the actual position either in respect of our perceptions of numbers of pedlars of services only or in respect of our understanding of the requirements of the services directive, please provide it. *Note that a pedlar of goods and services will need to be certified in order to trade as a pedlar of goods.*

None.

Draft Guidance

Question 30: Is the checklist at the front of the guidance an adequate one-page summary detailing what legal street selling looks like? Please give reasons for your answer including anything you would like to see added or removed.

Advice on avoiding causing nuisance by not trading in places designated as prohibited for street trading should be given.

The checklist does not reflect the position taken by the courts. Cardiff Magistrates Court for example, as a minimum require evidence that the individual has remained stationary in one place for at least an hour before accepted he has thereby infringed street trading legislation. The courts also appear to accept that trolleys are of a reasonable size provided it is possible for the individual to be able move them.

It is important that the checklist matches the legal position if it is to have any relevance.

Question 31: Do you think the draft guidance meets the needs of the target audience, i.e. enforcers and traders, including pedlars? Please give reasons for your answer.

Pedlars operating in town and city centre are organised and trained in evading the requirements of street trading legislation. The guidance will be of little use to them.

Question 32: Do you have suggestions for amendments to the guidance? If so, please specify how the guidance might be reformatted, added to or subtracted from, and why.

The legislation needs to be amended to include a prohibition on the use by pedlars of town centre streets and the guidance should reflect this.

Question 33: If you have any other comments or observations, in particular any information on possible costs relating to the options (see Impact Assessment), we are happy to receive them as well.

None.

Jim Sullivan
Chairman, All Wales, Licensing Technical Panel

ASSOCIATION OF CHIEF POLICE OFFERS (ACPO)

Deba & Roger

Please find attached ACPO's response to the consultation on Street Trading and Pedlar legislation. Please can you confirm receipt of this message by return.

Many thanks

Kind regards

Dave Spencer

Staff Officer for the ACPO President, Chief Constable Sir Hugh Orde OBE, QPM



Association of Chief Police Officers of England, Wales and Northern Ireland

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President: Chief Constable Sir Hugh Orde, OBE, QPM

12 February 2010

Deba Hussain & Roger Dennison
Customer and Competition Policy Directorate
Department for Business, Innovation & Skills
Bay 416
1 Victoria Street
London
SW1H 0ET

Dear Deba and Roger

Consultation on modernising Street Trading and Pedlar Legislation

Thank you for inviting the views of ACPO as part of your consultation for proposed changes to the licensing and management of pedlars.

The Pedlars Act was drafted in the late 19th Century and the language it uses is not in keeping with modern language and we believe that the definition and other wording within the Act requires completely refreshing in contemporary language.

The permitting of a trolley is one that we support, however the size needs to be defined and kept small so as to avoid the risk of large trailers being pulled along residential pavements causing unnecessary obstructions. It is suggested that a size similar to that permitted by airlines as hand luggage would be appropriate.

We agree that a standardised national certificate would be beneficial to all parties and would look for the following to be included within it as a minimum standard:

Photograph of holder

National insurance number (or equivalent for foreign nationals)

Address

Issuing authority name and contacts

Expiry date

A unique certificate number.

We can see the benefits of a national database that is owned and managed by local authorities. Such a data base will increase the capability of information sharing between Local Authorities and might also aid complaint handling and providing information to the police if necessary.

A national police owned and managed database would be unrealistic due to the very small numbers (4,000) concerned. Currently the police service manages 2,002 applications locally and nationally and current efforts are to reduce this number by convergence and consolidation.

We are not persuaded either way in respect of reintroducing certification for pedlar service providers, although reintroducing this would standardise the approach taken to those that trade from door to door.

We agree that the proposed criteria to refuse an application where it is considered that the applicant is unsuitable to hold the certificate by reason of misconduct or other sufficient reason will provide greater clarity and provide a more consistent approach to refusing applications by issuing authorities and safeguard a fair and non-discriminatory regime.

We strongly agree that the responsibility for issuing pedlars licenses should be transferred from the police to local authorities. The police are not responsible for any other trading licenses and this is consistent with the transfer of a number of licensing

activities over the past few years and was specifically highlighted by the Bureaucracy Task Force in 2003.

We see any issues pertaining to designating streets and imposing conditions on certificates as a matter for local authorities to consider to meeting their local needs and concerns.

The proposal to revoke the Pedlars Act so that pedlars would not require a certificate so long as they comply with any local restrictions removes the need to administer pedlars and difficulties that could arise in setting up a national database. It would also serve the needs of the pedlars in permitting them to trade freely, but it could, without regulation, bring about an increase in people trading who may currently not pass the 'character test' when licensed and a rise in pressurised selling and perceived nuisance within communities. Some regulation would be required to replace the Pedlars Act, either at a national or local level.

To enable effective enforcement we believe that providing local authority enforcement officers with powers to issue FPN's and powers of seizure, with forfeiture by order of the Courts would be beneficial. This would align powers with local authorities consistent with other powers they currently have. We see the offences that would be covered by a FPN as being a matter for local authorities to determine.

The Departments general perception is one we share, and we agree that the desired outcome is that in addition to properly licensed, or consented street traders, only those certified pedlars who trade legitimately would be trading in the streets.

In some circumstances, it may be justifiable for restrictions on the number of legal pedlars in specified areas and for specific time, but this would be a matter for local authorities to decide on based on local circumstances. We are not sure how this could be managed in a fair way, but suggest that perhaps a short term or day licence could be considered.

We believe that appeals in London should be determined by the Magistrates Court, as this is in proportion to the offence.

We are content with the checklist and draft guidance you provide and believe that it meets the needs of the target audience.

The final point we wish to raise is the current licence fee of £12.50. This is insufficient to cover the administration cost of issuing certificates and needs to be considered.

Yours sincerely

Dave Spencer

Staff Officer for the ACPO President, Sir Hugh Orde OBE QPM

AVON AND SOMERSET CONSTABULARY

Please find attached Avon and Somerset Constabulary Criminal Justice Departments response to "Street Trading and Pedlary Laws: A joint consultation on modernising Street Trading and Pedlar Legislation, and on draft guidance on the current regime".

<<Pedlars Consultation response.doc>>

Regards

Sophie Dingley(7561)

Criminal Justice Support Unit, CJD

Pedlars Consultation

Questions

10 Annex A - Summary of Questions

Certification Process

Question 1: Do you agree that the definition is in need of updating and clarifying? If not, please provide your reasons.

Answer 1: Yes

Question 2: Do you think anything should be taken out or added to the list and why?

Answer 2: *"Keeping a reasonable distance from their last sales position" is too ambiguous. If the Pedlar is stopped two paces from his previous sale he should be allowed to make the sale and not be concerned over the distance travelled from his previous position. What's important is that he moves from that position when the sale is made. Therefore, the above statement should be removed.*

Question 3: Do you think the permitted size of a trolley should be set out in the definition. Please provide reasons for your answer and an indication of any size you think appropriate.

Question 3: *No. This is more a question for enforcement, but I think it creates more complications by being prescriptive about the size of the trolley. Would the authority issuing the licence have to check the size before it was issued? Is there currently a problem with Pedlars using trolleys which are unreasonably large?*

Question 4: Do you have alternative suggestions? Please provide them.

Question 5: In your view, will updating the certificate as described above make verification and identification of lawful pedlars easier for enforcement officers? Please give reasons for your answer.

Answer 5: This would obviously improve the identification, but again I would ask whether the use of illegal certificates is a problem, and worth the cost of implementing the new system. I note the comment that the certificate price would increase to cover this, but by how much? Later it is suggested that the increase in certificate price would also go to an electronic database. I also note the suggestion that authorities already have the facility to do this; as a police force we only issues ID cards from our HQ, which is not open to the public, and therefore this would introduce a new and potential laborious process. Perhaps enforcing a standardised format across the country, without photo ID, would be a cheaper yet effective step.

Question 6: In your view, is the list of information to be included in a modified certificate complete? If not, please state what information you believe should be added/removed and why.

Answer 6: The addition of a date of birth would be advantageous.

Question 7: Do you think that a national database of pedlars' certificates will improve the current system of enforcement and certification?

Answer 7: Again this would obviously improve enforcement; however, I don't believe that there is a wide enough problem to warrant the cost of implementing a new system. Who would be expected to maintain the database? Who would pay for the creation of the application, and then the continued support and maintenance of the application?

Question 8: Do you agree that the list of information to be held on the database is complete and correct? If not, please state what information you would remove/add and why.

Answer 8: The addition of a date of birth would be advantageous.

Question 9: Would you support the reintroduction of certification for pedlar service providers? If so, please say why and provide any evidence in support of your view. If not, please say why.

Answer 9: No. As indicated, there is very little evidence to suggest that this portion of pedlars would cause a problem to the public.

Question 10: Do you think the proposed criteria will offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a certificate?

Answer 10: Yes.

Question 11: Do you think the proposed criteria will lead to a more consistent approach to refusal of applications from issuing authorities?

Answer 11: Not necessarily, as it will still be down to individuals to consider what previous convictions or other reasons are relevant.

Question 12: In your view, should responsibility for issuing pedlars' certificates be transferred from the police to local authorities? Please give reasons for your answer.

Answer 12: Yes. The Local Authorities are responsible for enforcement, and therefore should be responsible for the issue of the certificates as well, instead of

having little say as to who and where a pedlar can work. In addition they have the local knowledge of trading in their areas, and are therefore better placed to decide who should be issued with a certificate.

Question 13: Do you think that clear terms for refusal of applications in the legislation, coupled with a right of appeal, are sufficient safeguards to ensure a fair and non-discriminatory certification regime? If not, what alternative or additional safeguards do you think are required?

Answer 13: Yes

Question 14: What are your views on the above option, and how this might affect street trading or pedlar activity?

Answer 14: The LG(MP)A and CG(S)A would seem to be the most logical step to take. Apart from the obvious improvements in a more standardised approach toward application, I doubt it would adversely effect trading activity.

Question 15: With further work, do you think this option is viable? Please give reasons for your answer.

Answer 15: Yes.

Question 16: Are there other ways of maintaining the national access to pedlar certificates other than under the Pedlars Act ?

Answer 16: None that would have the same benefits as housing Pedlars and Street trading under the same regime.

Question 17: What are your views on the above option? Please give reasons for your answer.

Answer 17: This would make the role of enforcement more complicated, but as there are very few problems caused by pedlars, it is an easy option that could ultimately save money.

Enforcement

Question 18: Which of the above options do you favour?

Answer 18: Option D.

Question 19: Should Local Authority Enforcement Officers be given powers to:

- i) issue fixed penalty notices
- ii) seize goods, with forfeiture by order of the Court?

Please give reasons for your answer.

Answer 19: Yes to both powers.

Question 20: If you favour introducing new powers for local authority enforcement officers, can you provide evidence to support this view, particularly in terms of increasing the effectiveness of enforcement in this or other areas? If you do not support further powers, can you provide evidence to support this view?

Answer 20: We have nine local authority areas within Avon and Somerset Constabulary and enforcement action is inconsistent across the areas.

Therefore, a more dedicated and structured bank of enforcement powers would be welcomed.

Question 21: Is the list of offences in respect of FPNs complete and correct? If not, please state which offences you would add or take away, and why.

Answer 21: A further offence would be “Acting as a Pedlar without a valid certificate.”

Question 22: At what levels do you think the fixed penalties should be set? Please give reasons for your answer.

Answer 22: I believe that the suggested amounts are too high when compared with other fixed penalties, for offences such as Theft. Especially as stated in the impact assessment there is little evidence to suggest a problem with pedlars.

Question 23: Do you agree with the Department’s general perception, as set out above? If not, please explain.

Answer 23: Yes.

Question 24: Do you agree that if provision for more enforcement options against illegal street trading and a sufficient demarcation between legitimate pedlary and other street trading was established (along the lines discussed elsewhere in this document) that this would address the issues of concern to some local authorities in relation to unfair trading and competition? If not, please explain.

Answer 24: Yes.

Question 25: Do you agree that, in some circumstances, restrictions on the number of legitimate pedlars in specified areas and at specified times are justifiable? If not please explain why you do not agree.

Answer 25: Yes

Question 26: Do you agree that the list above illustrates the circumstances under which restriction on numbers is justifiable? Do you disagree with any of the listed circumstances, if so why? Would you add any circumstances to the list, if so, which and why?

Answer 26: 1) Yes. 2) No. 3) No

Question 27: Do you have any observations in relation to the ideas aired in the final paragraph above on methodology and notice?

Answer 27: As pedlars certificates are renewable after 12 months and most events or reasons for restricting pedlars is usually well planned in advance. It would seem reasonable that a schedule of restricted dates could be issued to pedlars for the coming year upon certificate application/issue.

Question 28: Should street trading appeals in London be determined by the Magistrates’ Court or the Secretary of State? Please give reasons for your answer.

Answer 28: Yes. Magistrates courts are much better suited to deal with appeals of this nature. I can think of no reason why the SoS should retain this function.

Services Directive

Question 29: If you are aware of any evidence to suggest that the conclusions set out above do not reflect the actual position either in respect of our perceptions of numbers of pedlars of services only or in respect of our understanding of the requirements of the services directive, please provide it. *Note that a pedlar of goods and services will need to be certified in order to trade as a pedlar of goods.*

Answer 29: None.

Draft Guidance

Question 30: Is the checklist at the front of the guidance an adequate one-page summary detailing what legal street selling looks like? Please give reasons for your answer including anything you would like to see added or removed.

Answer 30: There is no need to expand the summary further, it appears comprehensive.

Question 31: Do you think the draft guidance meets the needs of the target audience, i.e. enforcers and traders, including pedlars? Please give reasons for your answer.

Answer 31: Yes.

Question 32: Do you have suggestions for amendments to the guidance? If so, please specify how the guidance might be reformatted, added to or subtracted from, and why.

Question 33: If you have any other comments or observations, in particular any information on possible costs relating to the options (see Impact Assessment), we are happy to receive them as well.

C DUGDALE

I wish to put make the following comments regarding the Consultation.

I am particuarly concerned about the number of street traders in the centre of york. In a distance of less than 100 yards on Tuesday 10th November there were 6 "mobile stalls" selling scarfs etc. Coney St and Spurriergate where these stalls were being operated is closed to traffic from approx 10:00 to 16:00 each days and is a busy pedestrainised shopping area. Although I have quoted the 10th November the number of traders present was not unusual and in some cases it can be much much worse say on a weekend or in the summer. Like most wheelchair users, such as myself, or people with pushchairs it is very difficult to navigate the area when people congregate at the stalls and this stituation will only get worse in the the run up to Christmas.

In conclusion I do feel that these pedestrian areas in the centre of York are not a suitable place for street traders to operate.

Regards
C Dugdale

CRAWLEY TOWN CENTRE

Please find attached my response to the consultation of Changes to the Pedlar legislation

Cheers

bob

Bob O'Brien

Town Centre Manager

Response to the BIS joint consultation on modernising Street Trading and Pedlar Legislation and on draft guidance on the current regime

To be received at BIS by 29th January 2009

Question 1

Do you agree that the definition is in need of updating and clarifying? If not provide your reasons

I agree the definition needs updating

Question 2

Do you think anything should be taken out or added to the list and why?

1. The definition of “move around to trade – keeping a reasonable distance from their last position, moving on until another sale is made.” This statement needs to be made stronger. Who defines what is a reasonable distance? In our case they could just move 10-12ft and still be constantly in one street for the whole day. We should include “move from street to street” otherwise we have virtually a static sales position
2. We need to replace “should avoid standing between sales2” with “Must avoid standing between sales” as human nature is to do the minimum required

Question 3

Do you think the permitted size of a trolley should be set out in a definition?

It is vital to define what a reasonable trolley size is “small” is not a sufficient definition. This is fundamental to the success of the changes.

We have managed, by and large, to get the Pedlars to use trolleys 1.5m long by 0.6m wide. However we are now seeing trolleys of 2m plus high being bought into the town- see appendix 1. These are dangerous as the person pushing the trolley cannot see in front of them and we have had two instances of Pedlar's trolleys injuring pedestrians.

My view would be to limit the trolley size to a maximum 1.5m long by 0.6m wide by 1.5m high.

All stock displayed should be included within the overall trolley size.

By making this a maximum it allows the Pedlar to move the trolley easily in an emergency situation, reduces the risk of injury to the public as the pedlar can see over the top and down the sides of the trolley.

Question 4

Do you have any alternative suggestions?

No

Question 5

In your view, will updating the certificate as described make the verification and identification of lawful Pedlars easier for enforcement officers? Please give reasons for your answer

The suggestions as described would certainly assist the enforcement officers in their duties.

It should also, where necessary, assist them in issuing FPN's

Question 6

In your view, is the list of information to be included in a modified certificate complete, If not please state what information you believe should be added/removed and why?

I think there needs to be added a certificate of public liability insurance policy number.

Many of the Pedlars operate without public liability. They are in effect a sole trader and should have to have insurance cover to protect the general public. As explained before we have had two reported instances, I am sure there are many instances not reported, where there has been injury to the public through Pedlars moving their trolleys.

Question 7

Do you think that a national database of Pedlars certificates will improve the current system of enforcement and certification?

Yes, it is vital to the scheme that the data is nationally held.

Question 8

Do you agree that the list of information to be held on the database is complete and correct? If not, please state what information you would remove/add and why.

I would add the insurance certificate number

Question 9

With reference to section 6 of this document would you support the reintroduction of certification for pedlar services? If so, please say why and provide any evidence in support your view. If not, please say why

Before I could answer this fully I would need to see what the definition of “the sale of a service “is.

We currently accept that the AA/RAC is offering the sale of a service, as are knife sharpeners. However we are seeing an increase in “paintball companies” and general ticket sellers sending out representatives selling packages of paintball days/lotteries in advance, claiming they are offering a service just as the AA/RAC.

Currently the AA/RAC operates from static sites and the paintball companies try to operate from static sites.

I would not want to see a proliferation of Pedlars moving from selling “goods” to “services” without any form of control otherwise this whole new approach to legislation would be a waste of time

Question 10

Do you think the proposed criteria will offer greater clarity of what is expected of a Pedlar in terms of suitability to hold a certificate.

Yes, provided the previous comments made are included

Question 11

Do you think the proposed criteria will lead to a more consistent approach to refusal of applications from issuing authorities?

Yes

Question 12

In your view, should responsibility for issuing Pedlar’s certificates be transferred from the Police to local authorities? Please give your reasons for your answer

Yes I do think control should go to local authorities for the following reasons.

The control can be aligned with individual authority’s street trading legislation giving a more consistent approach

The control can be implemented by one authority which simplifies the procedure

Question 13

Do you think that clear terms for refusal of applications in the legislation, coupled with the right of appeal, are sufficient safeguards to ensure a fair and non-discriminatory certification regime? If not what alternative or additional safeguards do you think are required?

I believe that with the additional amendments already given this creates a fair and non discriminatory regime.

Question 14

What are your views on the above option, and how might this affect street trading or Pedlar activity?

I agree to the principal of the transfer the powers to the local authority

Question 15

With further work do you think this option is viable? Please give reasons for your answer.

If this legislation were incorporated under the existing Misc Provisions act it would aid control and legislation

Question 16

Are there other ways of maintaining the national access to pedlar certificates other than under the Pedlar Act?

Not unless there is a central database kept by the police

Question 17

What are your views on the above option, please give reasons for your answer

This option of revoking the Pedlars Act and excluding the activity from street trading regulation except in specific, defined, circumstances is initially an interesting one.

This would then allow councils to set a limit to numbers of Pedlars with specific areas and in specific times as dictated by the local authority.

The adoptive street trading provisions would be amended to exempt certain modes of trading and restrictions placed on the number of non licensed traders in designated streets at particular times and events.

However how would the pedlar know what conditions were in place in the particular town they visit, what methods would we need to put in place to show reasonableness

in informing them particularly when we place an FPN or take illegal street trading notices out against them?

We still would like to see a Pedlars certificate to enable our licensing officers to gather information on persons who illegally trade.

However we strongly support the idea that towns/local authorities have some measure of control as the numbers of Pedlars in a particular area (In the peak trading period without constant patrolling to ensure movement I anticipate to have one pedlar every 2 meters along my busiest street)

Question 18

Which of the above options do you favour?

Option D

Question 19

Should Local authority Enforcement officers be given powers to?

1. Issue fixed penalty notices

11. Seize goods

The provision of these powers provides local authority enforcement officers with the ability to issue FPN's and powers of seizure, with forfeiture by order of the courts.

This provides a quick and easy method of enforcement of the act without going to the huge cost of a court action.

It also shows that the Pedlar can operate under the new guidelines but there will be enforcement if they do not, in this way they will manage their own Pedlar operation far better.

Repeated fines, where necessary, certainly concentrates the mind

Question 20

If you favour introducing new powers for local authority enforcement can you provide evidence to support this view, particularly in terms of increasing the effectiveness of enforcement in this or other areas? If you do not support further powers, can you provide evidence to support this view?

Our enforcement officers take the details of all Pedlars visiting the site. They also watch how they operate and will give friendly advice as to how the individual should conduct himself under the existing Pedlars Act.

They will occasionally find an individual who will not abide by the act and will record their findings accordingly. However the authority will not, in the main, prosecute as the cost of the prosecution in time and effort far outweighs the penalty the Pedlar receives. Even the removal of his license will often result in applying for a

license again from a different police station so they could be back on the street taking the same illegal actions the next day.

The giving of a fixed penalty notice will certainly ensure that the individual acts within the law. A quick and easy solution to non compliance.

Question 21

Is the list of offences in respect of FPN's complete and correct? If not please state which offences you would add or take away and why.

I would wish to see the offence of trading under an incomplete license included in the FPN so that we can ensure that the pedlar has insurance.

Question 22

At what levels should the fixed penalty be set? Please give reasons for your answer.

FPN's should be set at a level that will ensure that the person receiving them acts under the law and in a responsible manner

The aim is to ensure Pedlars trade within the law and not to penalise them if they do trade within the law.

Therefore we must ensure that the penalty is large enough to change their actions, ideally we would not want to issue any EPN's as the deterrent effect would be enough. However the effect of an EPN will increase as they continue to receive them for not changing their actions.

With this in mind I would consider a £75 EPN would be sufficient.

Question 23

Do you agree with the Departments general perception as set out above? If not please explain

I would support the view that Pedalling in itself is not unfair competition. However when a Pedlar's do not operate within the law and stay static for long periods outside a retail unit selling similar, but more expensive products, then this could be deemed as unfair competition.

This is why one of my concerns in the proposed wording of "Must move around to trade -keeping a reasonable distance from their last position" What is reasonable? Is it to move completely away from the shop (their last position) or just to move a meter or two which still leaves them outside the shop windows?

One further point to consider, talk to Pedlars and they will complain of undue competition if an area is inundated with Pedlars selling the same products. In the main the ones who visit our town would be in favour of limiting the numbers – with the

proviso they were one of the number. However the point stands that too many Pedlars ruin the trade for the others.

Question 24

Do you agree that if provision for more enforcement options against illegal street trading and a sufficient demarcation between legitimate pedlrey and other street trading was established (along the lines discussed elsewhere in this document) that this would address the issues of concern to some local authorities in relation to unfair trading and competition. If not explain,

If the concerns and revisions that have been expressed in my previous answers are adopted then my answer would be yes.

Question 25

Do you agree in some circumstances, restrictions on the number of legitimate Pedlars in specified areas and at specified times are justifiable? If not please explain why you do not agree.

I agree

Question 26

Do you agree that the list above illustrates the circumstances under which restriction on numbers is justifiable? Do you disagree with any of the listed circumstances, if so why? Would you add ant circumstances to the list, if so which and why?

I agree with the list but would like to add: in streets where an excessive number of Pedlars can cause Health and Safety concerns, mass evacuation routes and emergency service routes. Here large numbers of trolleys being manoeuvred in a tight area or with large crowds could create a blockage of ingress or egress with the potential for a major incident

Question 27

Do you have any observations in relation to the ideas aired in the final paragraph on methodology and notice?

I would hand a letter of intent for day licenses to limit the number of Pedlars within a certain length of time before the event.

I would implement a day license to allow for weather changes on a first come first served.

A simple daily booking sheet could be e-mailed to all regulatory officers showing the name and the license number of those Pedlars issued a day license.
Any Pedlar without the day license would be asked to leave.

One could go one step further if needed.

To ensure that individuals do not take all the licenses on a daily basis you put in a clause of the limiting a pedlar to a maximum number of daily licenses within a set period.

If there are still daily licenses available by a set time in the day then they could be offered to a pedlar who has exceeded their limit of consecutive licenses.

Question 29

If you are aware of any evidence to suggest that the conclusions set out above do not reflect the actual position either in respect of our perceptions of the numbers of Pedlars of services only or in respect of our understanding of the requirements of the services directive, please provide it.

I still am unsure what is defined as a “service”

We have had cases of “paint ball companies come into the town centre set up a stall on wheels and work across a 15meter wide street with four/five operators each using a Pedlars license.

Indeed the RAC/AA can bring in 3or 4 people to operate in the same street

I anticipate that if the controls are tightened on the Pedlars of goods then there will be a move into the peddling of services which will result in the pushing of the boundaries of what is a service?

Question 30

Is the checklist at the front of the guidance an adequate one-page summary detailing what legal street selling looks like? Please give reasons for your answer including anything you would like to see added or removed.

We need to adjust the wording to include moving from street to street, and the size of the trolley

Question 31

Do you think the draft guidance meets the needs of the target audience, i.e. enforcers and traders, including Pedlars? Please give reasons for your answer.

It will do when revised with the points from Question 30

Question 31

Do you have suggestions for amendments to the guidance? If so please specify how the guidance might be reformatted, added to or subtracted from, and why.

Other than the reply n question 30 and 30 no.

Bob O'Brien
Town Centre Manager
Crawley
07747842358

Appendix 1





DORSET POLICE

Hello,

I have been advised of this site and the consultation taking place around Street Trading and Pedlars. I work for Dorset Police and have had dealings with members of the public applying for Pedlars certificates and I would like to raise the following as an issue I have encountered when dealing with Pedlars certificates.

I agree that the Pedlars Act of 1871 is outdated, confusing and needs to be modernised with a much clearer definition of a Pedlar. One of the problems we encounter is the confusion between the member of public requiring a Street Trader Licence or Pedlar licence. I have known people attend the council offices for a Street Trader Licence and informed it is a Pedlars certificate they require and sent to the police station. When details have been obtained it has been ascertained that they do not fall under the remit of a pedlar and have been sent back to the council.

Due to the confusion between the police and the council I feel it would make more sense for the pedlars and street traders to fall under the same authority (rather than one under council and one under Police) and have the same background checks completed with similar enforcements.

Thank you

Annie Bosomworth

FAREHAM TOWN CENTRE

I agree with all the options laid out below. The current system is unfair to law-abiding traders who have the appropriate public liability insurance, traders licence and who trade with legal goods. Pedlars do not offer any protection to customers - there is no come back for counterfeit or faulty goods. Their physical appearance is often grubby and they have a 'shifty' appearance. Pedlars activity does not contribute to a trading environment where customers feel safe and secure.

- Ways of making the street trading and pedlary regulatory regime more proportionate and effective.
- Providing local authorities with additional enforcement options in respect of illegal street trading.
- Updating the Pedlars Act 1871 to modernise the certification scheme and the definition of a pedlar.
- Consider introducing a means by which, local authorities might exert proportionate limits on certified pedlar activity in designated areas.
- Options for revoking the Pedlars Acts and providing for adequate regulation of itinerant traders within the street trading regime.
- Draft guidance on the application of the current regime in England and Wales for enforcement officers, street traders and pedlars looking at what constitutes acceptable street trading and pedlary practice

Regards

Patricia Gray

Fareham Town Centre Manager

www.fareham.gov.uk/towncentre

Fareham Town Centre Management is supported by R Ayling, Boots, Fareham Borough Council, Fareham Shopping Centre, First Hampshire & Dorset, Hampshire Police, Harvey Wine & Beer Making Centre, Human Factor Solutions, LA Fitness, La Orient, Lysses House Hotel, The Market Quay Shopping Centre, Marked & Sparkling, Marks & Spencer, Robert Dyas, Rovers Tackle, Southampton & Fareham Chamber of Commerce, Subway and

FEDERATION OF SMALL BUSINESSES

Please find attached our response.

With best wishes

Marie-Claude

Marie-Claude Hemming
Policy Advisor - Trade and Industry

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Federation of Small Businesses
The UK's Leading Business Organisation

Consumer and Competition Policy Directorate
Department for Business, Innovation & Skills
Bay 416
1 Victoria Street
London
SW1H 0ET

11 February 2010

Dear Sir / Madam

RE: FSB response to a joint consultation on modernising Street Trading and Pedlar Legislation, and on draft guidance on the current regime

The Federation of Small Businesses (FSB) welcomes the opportunity to respond to the above named consultation.

The FSB is the UK's leading business organisation. It exists to protect and promote the interests of the self-employed and all those who run their own business. The FSB is non-party political, and with 215,000 members, it is also the largest organisation representing small and medium sized businesses in the UK.

Small businesses make up 99.3 per cent of all businesses in the UK, and make a huge contribution to the UK economy. They contribute 51 per cent of the GDP and employ 58 per cent of the private sector workforce.

Essentially the FSB is in agreement with the Government's proposals. The FSB is of the view that street traders when properly managed and promoted can be an asset and bring trade to a town for the benefit of all but that the pedlars' licence has been abused. Anecdotal evidence indicates that customers are often sold poor quality goods at very high prices from aggressive pedlars and in turn static traders and retailers have lost custom as potential customers are reluctant to stop to make a purchase as they fear being pestered by pedlars.

We trust that you will find our comments helpful and that they will be taken into consideration.

Yours sincerely,

Clive Davenport
Chairman of the Trade and Industry Policy Unit
Federation of Small Businesses



Federation of Small Businesses
The UK's Leading Business Organisation

FSB response to consultation on modernising Street Trading and Pedlar Legislation, and on draft guidance on the current regime



In responding to this consultation the FSB would like to draw attention to a number of member case studies which are outlined in Annex 1 at the end of our response.

Questions 1-6

The FSB agrees that the definition of 'pedlar' needs updating and clarifying as per the list suggested. The FSB is of the view that the size of a pedlar's trolley is important and should not be larger than the size of a standard domestic wheelbarrow. A size restriction is important to prevent obstruction in busy areas and to discourage a pedlar from trading from what would be similar to a static stall.

Questions 7-9

The FSB notes the principle behind the creation of a national pedlars' database, but believes that a database may not be necessary given that it is possible for an enforcement officer to obtain a pedlar's details via directly contacting the issuing police station named on a pedlar's certificate. The FSB appreciates that this does not always generate an instant response and understands that the cost of setting up and maintaining the database would be recouped from the pedlars' certificate fee. However this would mean an increase in the annual certificate fee paid for by the pedlar and yet a further increase in Government debt and expenditure on consultancy fees which is not advantageous in the current economic climate. The FSB supports the certification of all pedlars and believes that the information should be standardised.

Questions 10-11

The FSB is of the view that the proposed criteria will offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a certificate and that it would lead to a more consistent approach to the refusal of applications from issuing authorities.

Questions 12-13

The FSB believes that responsibility for issuing national pedlars' certificates should be transferred from the police to local authorities, who have greater expertise in issuing trading licences.

In order to ensure fair competition the FSB is of the view that clear terms for the refusal of an application must be set out, coupled with a right of appeal.



Questions 14-16

The FSB is in favour of a national pedlar's certificate, enabling pedlars to trade anywhere in the UK. The FSB is of the view, however, that a case can be made for some local authorities to limit the numbers of pedlars. Essentially this would be for the purposes of crowd control and to ease pedestrian movement. We envisage that such a case would be made for the following scenarios:

- At peak seasonal times / particular events / festivals
- In locations extremely popular with tourists and visitors that are prone to overcrowding
- Streets in which static trading is prohibited

Question 17

The FSB does not agree with revoking the Pedlars' Act in this instance. The FSB welcomes the proposals outlined in this consultation and welcomes the proposals outlined to reinforce the national certification of pedlars. The FSB hopes that the comments outlined above are taken into consideration and are fully enforced.

Questions 18-23

The FSB is in favour of the Government's preferred option, providing local authority enforcement officers in England and Wales with the power to issue Fixed Penalty Notices (FPNs) and powers of seizure, with forfeiture by order of the courts. The FSB agrees with proposals that the FPNs should be between £100-£300 depending on the nature of the offence.

The FSB is also in agreement with the department's general perception that the desired outcome is that in addition to properly licensed, or consented, street traders, only those certified pedlars who trade legitimately would be trading in the streets.

Questions 24-33

The FSB is in agreement with the Government's proposals and any additional comments have already been made in response to this consultation.



ANNEX 1

Member case study examples

One member highlighted concerns about travellers arriving in Newquay at the beginning of the summer season and staying in campsites. The member said:

Each morning they drive the white van downtown to the shopping area of Newquay, unload a barrow carrying "Tourist Trade Goods" and start selling. They are set up with mobile credit card machines to facilitate the operation.

If challenged they state that they are authorised pedlars, producing their police certificate to support their statement. When told that a pedlar has to move to trade they point to the wheels on the barrow and then move it on a few feet.

Prosecuting them proves to be a waste of time and money as the magistrate courts, if they do convict, levy derisory fines as low as £ 4.00.

The member added:

Holders of pedlar certificates are using them to justify illegal street trading, driving their white vans into town each morning and setting up stalls in downtown areas.

Where pedlars have been taken to court, more often than not, the magistrates dismiss the charge. Where the case is appealed 8 out of 10 judgements are reversed.

Similar problems have also been reported in Padstow, Polseath, Bude, St Austell, Sheffield, South Yorkshire and Newcastle-upon-Tyne.

For further information

Marie-Claude Hemming
Marie-Claude.Hemming@fsb.org.uk

Federation of Small Businesses
2 Catherine Place, London SW1E 6HF

**LACORS NOW LGR (LOCAL GOVERNMENT
REGULATION)**

LACORS' response to the BIS STREET TRADING AND PEDLAR LAWS: A consultation on modernising street trading and pedlar legislation, and on draft guidance on the current regime



9 February 2010

Introduction

LACORS is the Local Authorities Coordinators of Regulatory Services. We are part of the LGA group and aim to promote and support council's regulatory services across the UK. LACORS' aims and objectives include providing advice and guidance to councils in the development and dissemination of good practice, supporting and promoting effective coordination, consistency, co-operation and collaborative arrangements.

LACORS welcomes this consultation as we believe the law in this area requires updating. We are aware that a number of councils have implemented their own local Acts as they see that the current laws are outdated and do not allow them to deal with issues relating to unlicensed street trading and illegal pedlary in their areas. Several councils lobbied the LGA to look for a national solution to this issue. This response is being made on behalf of LGA, WLGA and COSLA.

LACORS notes that Northern has made separate provision for street trading under the Street Trading (Northern Ireland) Act 2001. We understand that the provisions of this Act are similar to the LG(MP)A 1982, being based around a system of street trader licences and designated streets, with a more extensive and clearly delineated set of guidelines on the grounds for refusal or revocation. It also limits traders using a pedlars certificate to trading door-to-door only (in the same manner as the recent Private Acts) and introduces greater powers relating to seizure, forfeiture and the issuing of fixed penalty notices by local authority officers. It has the novel addition that local authorities in Northern Ireland can issue mobile street trading licences. This may offer pedlars an opportunity to trade in their traditional manner, albeit through local authority licensing. We consider that the benefits of using this system as a basis for legislation in Great Britain should be fully considered.

In several areas, we have recommended that the operational aspects of certain solutions need to be considered by an expert working group comprising expert council officers and the police. We would strongly recommend that BIS take up this option. LACORS would be happy to find a small group of council officers to sit on this group. This could operate largely via email with one or two structured meetings to fully discuss the operational and financial impact of certain proposals.

Summary of Key Questions and LACORS' responses

Certification Process

Question 1: Do you agree that the definition is in need of updating and clarifying? If not, please provide your reasons. AND

Question 2: Do you think anything should be taken out or added to the list and why?

Yes, the law is very outdated and needs updating. However any new definition would need to be considered carefully and take into account modern types of trade that would not have even been thought of at the time of the original Act (e.g. energy sales, estate agents and all the variations of mobile trader and cold callers). Any definition must be reasonably "future proofed" so that a new innovative type of trade over the next few years is neither accidentally caught nor excluded. LACORS suggests that this should be considered by the suggested working group.

Question 3: Do you think the permitted size of a trolley should be set out in the definition. Please provide reasons for your answer and an indication of any size you think appropriate.

LACORS has no strong views on this. We have received some feedback from councils outlining some advantages to this approach (e.g. large trolleys could easily obstruct highways and pavements). Councils have reported that some pedlars use trolleys which are, in essence, market stalls with wheels, and are too heavy to be pushed by pedlars. Some are delivered by goods vans to their daily location. One council suggested that they could be defined as being the same size as news vendors' stands, which are already defined in the LG(MP) Act 1982, 1 metre x1 metre maximum or 1 square metre.

Question 4: Do you have alternative suggestions? Please provide them.

No.

Question 5: In your view, will updating the certificate as described above make verification and identification of lawful pedlars easier for enforcement officers? Please give reasons for your answer.

Yes. In LACORS' view the proposals to update the certificate should make verification and identification of lawful pedlars easier. We agree that pedlars' certificates should have a national format including photo identification.

Whilst in theory the idea of a national database has merits in terms of access to all information by all councils and all police authorities, we are concerned about the financial implications of this. We believe this merits further thought and discussion with a particular focus on costs-v-benefits but also to agree issues such as hosting, data protection and access.

We suggest this should be considered by the suggested working group.

Question 6: In your view, is the list of information to be included in a modified certificate complete? If not, please state what information you believe should be added/removed and why.

We suggest that date of birth (and possibly place of birth) is also included.

Question 7: Do you think that a national database of pedlars' certificates will improve the current system of enforcement and certification?

In LACORS' view a national database may potentially only be of use if it is up to date and easily accessible to all councils and police authorities. If it cannot be easily checked by enforcement officers it will be of very limited value. We also refer you back to question 5 to outline our concerns over the possible cost implications of this.

Question 8: Do you agree that the list of information to be held on the database is complete and correct? If not, please state what information you would remove/add and why.

LACORS suggests the working group needs to consider this alongside issues raised in questions 5-7.

Question 9: Would you support the reintroduction of certification for pedlar service providers? If so, please say why and provide any evidence in support of your view. If not, please say why.

We are aware that a frequent form of rogue trading activity relates to gardening services and or roofing/building work targeting vulnerable members of the community by walking door to door offering their services. We know the Trading Standards institute have in the past collated evidence about the detriment caused by cold calling for property repairs. However, the answer to the question will largely depend on whether the definition of a pedlar will include a combination of goods and services. If this legislation is to help support crime and disorder reduction strategies then careful consideration must be given to this issue.

Question 10: Do you think the proposed criteria will offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a certificate?

One suggestion we received was for BIS to consider using the definition of "fit and proper" as used in taxi licensing. The Government must issue guidance on the use and relevance of previous convictions in making such decisions to ensure fairness.

Another problem in determining the fitness of any applicant is the lack of a database for local authority enforcement activity. Clearly certain crimes will be recorded on the Police National Computer, and some other "fair trading" related issues will be recorded on the OFT register of convictions, but there is now no holistic database where a local authority can get the full background of an applicant. This is an issue LACORS has raised with the LBRO in relation to other problems, not least it rendering councils unable to comply with MoJ criminal practice directions about producing antecedents.

Question 11: Do you think the proposed criteria will lead to a more consistent approach to refusal of applications from issuing authorities? AND

Question 12: In your view, should responsibility for issuing pedlars' certificates be transferred from the police to local authorities? Please give reasons for your answer.

In principle an updating and consolidation of both pedlars' legislation and street trading legislation into a single consolidated system is worthy of consideration as it is logical that they are dealt with together. Therefore the transfer of the issuing of pedlars' certificates from the police to councils because of the links with street trading also seems sensible. However there will clearly be costs to implementing this and councils would need to be able to ensure that they can recover all the costs of administering any new regime (not simply the pure administrative cost of issuing the certificate as is currently the case).

We would recommend that this be further considered via the suggested expert advisory group and further consultation with the local authority associations across the UK would probably be required if there is a desire to progress this further.

Question 13: Do you think that clear terms for refusal of applications in the legislation, coupled with a right of appeal, are sufficient safeguards to ensure a fair and non-discriminatory certification regime? If not, what alternative or additional safeguards do you think are required?

Yes, this would mirror other licence/registration procedures.

Question 14: What are your views on the above option, and how this might affect street trading or pedlar activity?

Question 15: With further work, do you think this option is viable? Please give reasons for your answer.

Question 16: Are there other ways of maintaining the national access to pedlar certificates other than under the Pedlars Act?

On the face of it revoking the Pedlars Acts and amending the LG(MP)A (and Civic Government (Scotland) Act 1982 to incorporate relevant provisions to include pedlars within street trading will simplify the process but needs to be worked through with COSLA, NILGA and WLGA.

At the same time Schedule 4 would need to include powers to seize goods and powers of arrest for enforcers.

Including pedlars in street trading legislation would have the advantage of providing a consistent approach should licensing be transferred from the police to councils. In principle LACORS believes this option is viable but needs a group with operational expertise to consider and comment upon it.

Question 17: What are your views on the above option? Please give reasons for your answer.

LACORS has concerns about revoking the Pedlars Acts and excluding pedlar activity from street trading regulation except in specific, defined circumstances. Revoking the pedlars' legislation and having no certification scheme would not enable councils to exert proper controls over itinerant trading activity.

Our preference would be for a consolidated system. However even if this is not to be the preferred option, we would want local councils to be able to put in local restrictions on pedlar activity, within a nationally agreed framework. This is important to reflect local community and business needs. Care would be need to be taken as to how such local restrictions were communicated to pedlars. Councils would also have to ensure that any such local restrictions were properly enforceable.

Enforcement

Question 18: Which of the above options do you favour?

LACORS favours D as this is the broadest possible option to allow councils to choose how to deal with local issues.

Question 19: Should Local Authority Enforcement Officers be given powers to:

- issue fixed penalty notices
- seize goods, with forfeiture by order of the Court?

Please give reasons for your answer. AND

Question 20: If you favour introducing new powers for local authority enforcement officers, can you provide evidence to support this view, particularly in terms of increasing the effectiveness of enforcement in this or other areas? If you do not support further powers, can you provide evidence to support this view?

LACORS believes councils should have the powers to issue FPNs and seize goods as outlined above. It is important with any regulatory activity the councils have a broad range of enforcement options to ensure they can choose the most proportionate and appropriate response in each case.

Question 21: Is the list of offences in respect of FPNs complete and correct? If not, please state which offences you would add or take away, and why.

We suggest this is looked at by the suggested working group.

Question 22: At what levels do you think the fixed penalties should be set? Please give reasons for your answer.

Any fines need to be high enough to prove a deterrent (and be economical for councils to pursue).

Question 23: Do you agree with the Department's general perception, as set out above? If not, please explain.

In LACORS' view this seems reasonable.

Question 24: Do you agree that if provision for more enforcement options against illegal street trading and a sufficient demarcation between legitimate pedlary and other street trading was established (along the lines discussed elsewhere in this document) that this would address the issues of concern to some local authorities in relation to unfair trading and competition? If not, please explain.

Yes, generally. However, we feel that consideration needs to be given to how this framework links with areas where councils and residents have agreed to set up No Cold Calling Zones or Cold Calling Control Zones.

Question 25: Do you agree that, in some circumstances, restrictions on the number of legitimate pedlars in specified areas and at specified times are justifiable? If not please explain why you do not agree.

LACORS agrees; it enables councils to make local choices.

This could be utilised to ensure that pedlars do not adversely impact other businesses or visitors to the town centre. This could be in the form of numbers, time and location as examples. Such restrictions work well with street collections already dealt with within councils.

Question 26: Do you agree that the list above illustrates the circumstances under which restriction on numbers is justifiable? Do you disagree with any of the listed circumstances, if so why? Would you add any circumstances to the list, if so, which and why?

Generally speaking LACORS agrees but discussion with a working group is necessary to ensure all operational issues have been properly addressed.

Question 28: Should street trading appeals in London be determined by the Magistrates' Court or the Secretary of State? Please give reasons for your answer.

LACORS has no comment other than to say that any appeal system needs to be proportionate and consistent throughout the UK.

Draft Guidance

We have not commented on the suggested detail of the guidance as we believe this would be better discussed and agreed by a working group. However we would like to see a simple "How To" guide produced by the government for use by street traders and pedlars.

10th February 2010

LINCOLN BUSINESS IMPROVEMENT GROUP

Hi Guys

Please find my response attached

Kind regards

Mick Lake
Operations Manager

Lincoln Business Improvement Group
First Floor
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351-355 High Street
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LN5 7BN

This response is submitted by Mick Lake, on behalf of Lincoln Business Improvement Group (LincolnBIG) Sibthorp House, 351-355 High Street, Lincoln, LN5 7BN

LincolnBIG is a City Centre Management Company with approximately 800 members (retail / leisure / service sector mix) based in Lincoln City Centre.

Certification Process

Question 1: Do you agree that the definition is in need of updating and clarifying? If not, please provide your reasons.

Yes

Question 2: Do you think anything should be taken out or added to the list and why?

Happy with the list

Question 3: Do you think the permitted size of a trolley should be set out in the definition. Please provide reasons for your answer and an indication of any size you think appropriate.

I think a maximum size should be specified.

- A large trolley impedes pedestrian flow and**
- A large trolley is detrimental to the visual amenity of a historic town or city**
- A large trolley gives pedlars an unfair competitive advantage over retailers who have to pay business rates**
- The trolley should be no larger than 35cm x 25cm and no taller than 50cm**

Question 4: Do you have alternative suggestions? Please provide them.

No alternative suggestion

Question 5: In your view, will updating the certificate as described above make verification and identification of lawful pedlars easier for enforcement officers? Please give reasons for your answer.

Updating the certificate will make it easier to enforce as it will be more difficult for pedlars to give a false identity

Question 6: In your view, is the list of information to be included in a modified certificate complete? If not, please state what information you believe should be added/removed and why.

The certificate should also include

- Pedlars full name and address**
- Date of Birth & Place of Birth**
- Nationality**
- Passport number if they do not have a National Insurance Number**

If the Fixed Penalty Notice is not paid, then this information would be required to bring the person to justice and to ensure the correct person is identified.

Question 7: Do you think that a national database of pedlars' certificates will improve the current system of enforcement and certification?

Yes

Question 8: Do you agree that the list of information to be held on the database is complete and correct? If not, please state what information you would remove/add and why.

Yes

Question 9: Would you support the reintroduction of certification for pedlar service providers? If so, please say why and provide any evidence in support of your view. If not, please say why

I have no observations on this

Question 10: Do you think the proposed criteria will offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a certificate?

Yes

Question 11: Do you think the proposed criteria will lead to a more consistent approach to refusal of applications from issuing authorities?

No observations

Question 12: In your view, should responsibility for issuing pedlars' certificates be transferred from the police to local authorities? Please give reasons for your answer.

I agree that the responsibility should transfer to Local Authority as they are better placed to assess the impact of granting a certificate

Question 13: Do you think that clear terms for refusal of applications in the legislation, coupled with a right of appeal, are sufficient safeguards to ensure a fair and non-discriminatory certification regime? If not, what alternative or additional safeguards do you think are required?

This is fair

Question 14: What are your views on the above option, and how this might affect street trading or pedlar activity?

It makes sense for all pedlar / Street Trading activity to be encompassed within the same regime.

Question 15: With further work, do you think this option is viable? Please give reasons for your answer.

No observations

Question 16: Are there other ways of maintaining the national access to pedlar certificates other than under the Pedlars Act ?

No observations

Question 17: What are your views on the above option? Please give reasons for your answer.

No observations

Enforcement

Question 18: Which of the above options do you favour?

Option D

Question 19: Should Local Authority Enforcement Officers be given powers to:

issue fixed penalty notices

seize goods, with forfeiture by order of the Court?

Yes to both

Please give reasons for your answer.

There needs to be some form of penalty which acts as a deterrent

Question 20: If you favour introducing new powers for local authority enforcement officers, can you provide evidence to support this view, particularly in terms of increasing the effectiveness of enforcement in this or other areas? If you do not support further powers, can you provide evidence to support this view?

Pedlars who visit our city know that any fine under the current system is miniscule compared with their day's takings and they are prepared to take the risk. Seizure of their stock would make them think twice before flouting the law.

I am also in favour of Local Authority Enforcement officers being given the power to seize a Pedlar's certificate from any pedlar who persistently flouts the law.

Question 21: Is the list of offences in respect of FPNs complete and correct? If not, please state which offences you would add or take away, and why.

I would add

Pedlar – failing to comply with conditions e.g.

- Size of trolley**
- Remaining stationary when not conducting a transaction**
- Fail to produce certificate when required**
- Etc**

Question 22: At what levels do you think the fixed penalties should be set? Please give reasons for your answer.

£250 to act as a deterrent

Question 23: Do you agree with the Department's general perception, as set out above? If not, please explain.

I disagree with the departments general perception particularly with regard to pedlars gaining an unfair commercial advantage.

I think the department has missed some important points with regard to the comparative retail modes:

- Street markets – these are held periodically – often on a certain weekday. Pedlars operate every day.**
- Street Markets – Stall holders pay an agreed fee which is many times that paid by a pedlar.**
- Street Traders – these are regulated by local authorities who can impose local conditions – unlike the pedlar**
- On Line retailers – unlike the pedlar, this group does not benefit directly from High Street footfall.**

Question 24: Do you agree that if provision for more enforcement options against illegal street trading and a sufficient demarcation between legitimate pedlary and other street trading was established (along the lines discussed elsewhere in this document) that this would address the issues of concern to some local authorities in relation to unfair trading and competition? If not, please explain.

I disagree. The proposals, as they stand, do not address the issues of unfair competition

Question 25: Do you agree that, in some circumstances, restrictions on the number of legitimate pedlars in specified areas and at specified times are justifiable? If not please explain why you do not agree.

I agree that it is desirable to prohibit pedlars where certain local conditions are met

Question 26: Do you agree that the list above illustrates the circumstances under which restriction on numbers is justifiable? Do you disagree with any of the listed circumstances, if so why? Would you add any circumstances to the list, if so, which and why?

The circumstances are fair. But I have some concerns about administering a system which restricted numbers? Who / how would such decisions be made? Far better to prohibit completely when these criteria apply.

Question 27: Do you have any observations in relation to the ideas aired in the final paragraph above on methodology and notice?

The proposal to limit numbers is unworkable – far better prohibit pedlars completely if the criteria justify it.

Question 28: Should street trading appeals in London be determined by the Magistrates' Court or the Secretary of State? Please give reasons for your answer.

No observations

Services Directive

Question 29: If you are aware of any evidence to suggest that the conclusions set out above do not reflect the actual position either in respect of our perceptions of numbers of pedlars of services only or in respect of our understanding of the requirements of the services directive, please provide it. *Note that a pedlar of goods and services will need to be certified in order to trade as a pedlar of goods.*

No observations

Draft Guidance

Question 30: Is the checklist at the front of the guidance an adequate one-page summary detailing what legal street selling looks like? Please give reasons for your answer including anything you would like to see added or removed.

This seems well-rounded

Question 31: Do you think the draft guidance meets the needs of the target audience, i.e. enforcers and traders, including pedlars? Please give reasons for your answer.

Apart from the first page which is quite lucid, the remainder of the guidance singularly fails to convey information in a form which is readily understandable by the lay person. I accept that the legislation is convoluted, but this document makes no attempt at clarity.

Question 32: Do you have suggestions for amendments to the guidance? If so, please specify how the guidance might be reformatted, added to or subtracted from, and why.

Shred it. It is neither use nor ornament in its current format.

Question 33: If you have any other comments or observations, in particular any information on possible costs relating to the options (see Impact Assessment), we are happy to receive them as well.

The price of a Pedlars Certificate should be pitched at a level which reflects the economic benefit the applicant is likely to enjoy. It should also be set at a rate which generates sufficient revenue for local authorities to administer and enforce the scheme. A fee of £1000 per year would not be reasonable having regard to these factors

**Mick Lake
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LincolnBIG
351-355 High Street
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MAGISTRATES ASSOCIATION

Please find attached the Magistrates' Association response to the consultation on street trading and pedlar legislation.

*Sonia Andrews
Council & Committee Officer
Magistrates Association
28 Fitzroy Square
London W1T 6DD*

10/06

MAGISTRATES ASSOCIATION

JUDICIAL POLICY & PRACTICE COMMITTEE

Response to consultation on modernizing Street Trading and Pedlar Legislation

Annex A - Summary of Questions

Q1 *Do you agree that the definition is in need of updating and clarifying? If not, please provide your reasons.*

Yes

Q2 *Do you think anything should be taken out or added to the list and why?*

This says any poor individual must keep moving except when actually making a sale. Words need changing.

Q5 *In your view, will updating the certificate as described above make verification and identification of lawful pedlars easier for enforcement officers?*

A common certificate must be an advantage, but why should it cost more money if it is simpler?

Q7 *Do you think that a national database of pedlars' certificates will improve the current system of enforcement and certification?*

Q8 *Do you agree that the list of information to be held on the database is complete and correct? If not, please state what information you would remove/add and why.*

Q10 *Do you think the proposed criteria will offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a certificate?*

Q12 *In your view, should responsibility for issuing pedlars' certificates be transferred from the police to local authorities?*

Yes to Qs 7, 8, 10 & 12. In relation to Q12 other similar activities are managed by Local Authorities this seems to fit with them.

Q13 *Do you think that clear terms for refusal of applications in the legislation, coupled with a right of appeal, are sufficient safeguards to ensure a fair and non-discriminatory certification regime? If not, what alternative or additional safeguards do you think are required?*

Right of Appeal should be heard in a Magistrates' Court as for Licensing disagreements

Enforcement

Q18 *Which of the above options do you favour?*

Option D

Q19 *Should Local Authority Enforcement Officers be given powers to:*

i) issue fixed penalty notices

ii) seize goods, with forfeiture by order of the Court?

Yes. However, there must be further sanctions for repeat offenders via the court with the maximum fine of £1000 as now.

Q28 *Should street trading appeals in London be determined by the Magistrates' Court or the Secretary of State? Please give reasons for your answer.*

Yes to be consistent nationally.

Q33 *If you have any other comments or observations, in particular any information on possible costs relating to the options (see Impact Assessment), we are happy to receive them as well.*

Para 83 describes the consideration of revoking the Pedlars Act remove any requirement for certificates and allow pedlars to trade only within local restrictions. In recent times there has been a significant increase in rogue traders operating in many areas. Removal of such controls as described would send the wrong messages to both the public and those committing offences even though they might not come under the definition of “pedlar”.

8 February 2010

MANCHESTER UNITED Football Club



7th January 2010

Deba Hussain/Roger Dennison,
Consumer & Competition Policy Directorate,
Department for Business, Innovation & Skills,
Bay 146,
1 Victoria Street,
London.
SW1H 0ET.

Dear Sir/Madam,

Re; Street Trading & Pedlary Laws: A joint consultation on modernising street trading and pedlar legislation, and on draft guidance on the current regime.

I am aware that the abovementioned subject is open to public consultation until 12th February 2009. Consequently, I take this opportunity to submit my experiences of such legislation whilst working within Brand Protection for Manchester United Limited.

Background

Manchester United has a stadium capacity of approx 76,000 and hosts on average 29 home matches at Old Trafford throughout the football season.

Currently street trading from permanent pitches is not permitted on Sir Matt Busby Way. Pitches licenced by Trafford Council are situated within the locality of the stadium at various points on streets beyond Sir Matt Busby Way.

The forecourt at Old Trafford is block-paved, and the property of Manchester United. There is also a block-paved area on the opposite side of Sir Matt Busby Way, which is again the private property of the Club.

However, the block paving is edged on both sides of Sir Matt Busby Way by a public pavement.

It is our experience that the number of pedlars appearing on the public pavement of Sir Matt Busby Way is increasing, with a recent home match seeing 17 pedlars over the space of 150 metres. The pedlars are fully aware of our property boundaries and sell their goods on the very edge of the block paving directly in front of our Megastore.

The Act

It is my understanding that the Pedlar's Act was introduced to apply to door to door, town to town sellers, who operated on foot. The pedlars should constantly be on the move and not remain in any place for longer than it takes to complete a sale.

From the definition taken from the Act, the term "pedlar" means any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise immediately to be delivered, or selling or offering for sale his skill in handicraft;

MANCHESTER UNITED FOOTBALL CLUB LIMITED

Sir Matt Busby Way, Old Trafford, Manchester M16 0RA
Telephone: 0161 868 8000. Facsimile: 0161 868 8804. www.manutd.com
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Our Experience

We regularly see pedlars with large heavy bags take up a post on Sir Matt Busby Way. They remain in the same place for a considerable length of time, as in some cases the bag is too heavy to carry about. If they are mobile, they move a few paces, or maybe 20 or 30 feet. I do not believe these activities meet with the definition of a pedlar, and therefore question whether they should have a Pedlar's Licence at all.

Having worked with the local authorities to combat counterfeiting around the stadium on a match day, I am also aware that the Pedlar's Licences issued around the country differ greatly and that there is no uniform licence. Some feature photographs, whereas others don't. This means there is no way of checking whether the name on the licence is the true identity of the holder.

In addition, as each Police Authority's licence is so different it is impossible to determine whether the licence is fake or genuine.

The Officers of Trafford Council and local Police Officers have worked extremely hard to eliminate the sale of counterfeit goods and illegal street trading from the Old Trafford area but it seems that for £12.25, anyone can purchase a Pedlars Licence enabling them to trade anywhere for a full year.

Recommendations

I strongly believe the Pedlar's Act should be reviewed and amended to address:

- a) the changes in modern society, and;
- b) the current misinterpretation of the definitions.

I also believe uniformity of licences should be introduced so that all Police authorities issue a standard document containing security print to prevent forgeries.

Furthermore, in addition to the Police, it would be beneficial for Trading Standards to be given powers of enforcement within the Act.

I hope the above provides you with an insight into the use of Pedlar's Licences around the Old Trafford Stadium.

Please do not hesitate to contact me should you require further information or wish to discuss this further.

Yours sincerely,

Andrea Murphy
Brand Protection Manager

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