nabma

the voice of local authority markets

It has taken a long time to emerge, but we have at last received the government's consultation on pedlars and street traders which will have a big impact on markets. Forgive me devoting the whole of my column to this issue, but it is vitally important to the future of our industry. The consultation closes on the 15th February, 2013 and it is vital that the voice of markets is heard.

Nabma is taking a number of opportunities to consult members on the proposals contained in the consultation. The first opportunity was provided at the recent Retail Forum and it is anticipated that there will be a meeting of the Association of London Markets, early in January, when there will be a focus on street trading. The One Day Nabma/ATCM Conference on the 31st January, 2013 will also look in detail at the proposals. On that occasion we will have Roger Butterfield, an expert in street trading law, and Rachel Onikosi, Policy Manager in BIS, who will be able to assist in a better understanding of the proposals and how they will impact on Markets and Street Trading arrangements.

The first thing to say about the consultation is that the focus is entirely on pedlars and street trading. There is no reference to market rights. It will be recalled that there has been previous dialogue with BIS about the impact of the Directive on market rights. Nabma's position remains the same. There are good reasons for believing that the Directive does not apply to market rights and this is the position which Nabma maintains and, in such circumstances, recommends that market operators are free to continue adopting a market rights policy with the caveat that any such policy should be proportionate and reasonable and underpinned by policy considerations.

Turning to the proposals put forward by BIS, the general feeling must be one of disappointment. While there is to be repeal of the Pedlars Acts 1871 and 1881 and a new definition of a pedlar, it is a matter of great concern that pedlars continue to enjoy an exemption from the provisions of the street trading legislation.

It has always been Nabma's position that giving pedlars an exemption places them in a much more favourable position than bona fide market and street traders. While the new definition of a pedlar attempts to bring greater clarity to what a pedlar is allowed to do, there remain significant concerns about how the new definition will operate in practice.

One of the biggest concerns relating to pedlars and those who trade illegally under the guise of pedlars is the lack of effective enforcement powers. Several local authorities have been sufficiently concerned about this issue that they have enacted private legislation to introduce more effective enforcement powers in their own areas. It is a matter of great concern to Nabma that the proposals outlined by BIS suggest amendments to pedlars and street trading legislation, but leave enforcement for some unspecified time in the future.

Nabma does not accept this view. There are already well established and effective enforcement powers in London and enacted in private legislation across the country. There has been no dispute among local authority and town centre managers about the sort of enforcement powers that they want to see introduced. The effect of the BIS proposals is to significantly weaken the position of local authorities as the current enforcement powers in London and contained in various local legislation will have to comply with the requirements of the Services Directive.

Given, as already indicated, that the BIS consultation makes no reference to when this future review might be carried out, there is no realistic prospect of proper enforcement legislation being introduced for a considerable number of years.

Nabma will campaign strongly to persuade government that this proposal needs to be reviewed in order that adequate end effective enforcement procedures can be implemented alongside the other Service Directive proposals.

The proposed new definition of a pedlar will include the following elements:

a. It will continue to include a requirement that the pedlar trades only on foot.

b. Pedlars will be required to trade by means of visits from house to house or if he trades by other means (i.e.trading with pedestrians while travelling through the streets) or partly by other means (partly trading with pedestrians while travelling through the streets, partly trading house to house).

c. The pedlar must carry all his goods on his person without any means of support or all such goods must be carried or in a receptacle (that may or may not be wheeled) which he pushes or pulls. The combined dimensions of that receptacle together with any articles on it must not exceed 2 metres high, 1 metre long and 1 metre wide.

d. Pedlars can remain static in the same location for a maximum of 10 minutes after his arrival there. He should then move on (at a reasonable speed) to a location which is at least 50 metres away from the first location, and again he should remain in that second location for no more than 10 minutes. He can not immediately return to the first location since he cannot return to a location that he has previously occupied within 3 hours of leaving that location. Nor can he occupy a location within 50 metres of any location he has occupied during the previous three hours.

e. However a pedlar may be approached by one or more potential customers during the 10 minute period and, in circumstances that he's unable to conclude the transaction, he may continue to remain in that location for a period beyond the 10 minutes. Once all transactions have been concluded the pedlar must continue to move away immediately.

Nabma has a number of concerns with regard to the revised definition of a pedlar:

1. Nabma believes that the dimensions of the receptacle are far too generous. Comment was made at the recent Retail Forum that there are going to be serious problems encountered in streets and busy market areas if a number of these receptacles are being pushed around.

2. There is no restriction on the type of goods that can be sold by pedlars. Nabma believes that restrictions should apply so that pedlars complement rather than compete with market and street traders.

3. There is no limitation on the number of pedlars that can trade in a particular location. References have already been made to the potential problems that can arise if a number of these receptacles are present in a town centre area. Nabma argues that a limitation on the number of pedlars should be introduced if there are valid public safety reasons for limiting the number in a particular location.

4. The prospect of a pedlar creating an artifical audience to allow him to remain in the same position for an extended period is likely to cause problems for markets and street trading managers.

Nabma believes that the proposals put forward by BIS place pedlars at significant advantage to market and street traders and if pedlars are to retain an exemption under the street trading legislation, then much tighter controls needs to be introduced to maintain standards and to ensure that public safety issues are not compromised.

At this stage Nabma does not intend to comment on the street trading provisions. Consultation on the impact of the proposals is being considered and further advice will be provided on the street trading provisions in due course.

There are, however, two matters arising from the proposals on street trading that do have an impact on markets.

The first is the confirmation of the need to have an electronic applications system in place. Nabma has reminded members on a number of occasions of the need to ensure that applications for market stalls can be made online together with the provision of all supporting information.

The second matter, and one of great importance to many market managers, relates to where an application is received in respect of a particular trade which is already represented on the market but there are spaces available on the market. It is practice in a number of markets for applications from such traders to be refused to maintain a balance of trade or to protect exciting traders.

In terms of street trading, where there is currently a provision allowing a local authority to refuse an application on the ground that there already enough traders trading in the street, BIS takes the view that it is extremely unlikely that this refusal ground could ever be used compatibly with the Directive. They are therefore intending to repeal this ground of refusal completely. This proposal in respect of street trading must have direct relevance for markets.

Nabma has always urged caution with regard to a policy of refusing applicants for stalls where there is space on a market. However, Nabma recognises the importance of the balance of trade policy to many of our members and we are seeking further advice on this issue and hope to be in a position to comment before the end of the consultation period.

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