



Consultation Response form for England and Wales ONLY

Consultation on Street Trading and Pedlary Laws – Compliance with the requirements of the European Services Directive

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is **15 March 2013**.

Name: the following named persons have given written authority to attach their name to a joint reply by pedlars.info to URN12/605 & 606 and accept that information to be made public:

Alain Sandenbergh
Alan Mills
Alex Davidson
Alexander Campbell-Lloyd
Alexandra Lort Phillips
Alexsandra Rakic
Alyosha Kositzki-Metzner
Amber Moss
Angus Pedrick
Anthony Miller
Bo Poraj
Chris Hunt
Chris Noonan
Claire Fernando
Clive Kanharn
Daz Windsor
Ellen Harty
Frank Brooke
Frankie Fernando
Gordon Elliott
Greg Cox
Ian Kruger
Ioan Urs
John Swift-Simpkin
Josua Lloyd
Joy Swift-Simpkin
Julian McDonnell

Justin Edmonds
Keith Brock
Leslie Maisey
Luzviminda Casey
Mark Bowen
Mark Davison
Mayumi Rakic
Meriel Campbell-Lloyd
Mick Mack
Naomi Aptowitzer
Natalie Cookson
Nelson Reid
Nicholas McGerr
Pancho Elliott
Paul Andrew
Paul Marshall
Paul Vale
Phil Duffield
Robert Campbell-Lloyd
Robert Mills
Shazia Wahab
Simon Bundred
Sydney Williams
Talhah Khan
Ted Bowen
Tim Bat
Tony Furnivalis
Tony Hawkins
Walter Cuba
Zoe Lees

Organisation (if applicable):

Address:

C/o www.pedlars.info email: pedlars.admin@gmail.com

Please return completed forms to: .pdf copy emailed to Onikosi Rachel
(CCP) rachel.onikosi@bis.gsi.gov.uk 15 March 2013 &
stcompliance@bis.gsi.gov.uk and to each of above named persons

Name: Rachel Onikosi, Policy Manager

Postal address: Department of Business, Innovation and Skills
Consumer and Competition Policy Directorate,
1 Victoria Street, London,

SW1H OET

Tel: 020 7 215 5898

Email: stcompliance@bis.gsi.gov.uk

If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group from the list below.

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input checked="" type="checkbox"/> tick	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input checked="" type="checkbox"/> tick	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input checked="" type="checkbox"/> tick	Other (please describe) EU recognised profession of pedlary

Below we set out a variety of questions in relation to our draft set of regulations attached at Annex A of the consultation document

We would like all consultees to fully consider our proposals and **explain the reasons for your answers as fully as possible.**

Repeal of the Pedlars Acts:

Question 1: Do you agree with the proposed repeal of the Pedlars Acts 1871 and 1881 UK-wide?

☐ Yes

☐ **tick No**

Comments:

See below

HMG admits that it does not have a clear understanding of the national picture and by such admissions rules itself incompetent to draft national legislation. Any claim that the consultation proposes “national” resolution is considered by stakeholders to be fallacious. The Pedlars Act is the only “national” legislation that lends itself to resolving perceived problems.

Parliament directed government to desist from introducing piecemeal legislation and consequential parliamentary time to resolve perceived national problems but the draft proposed legislation from BIS exacerbates the potential for piecemeal legislation at an adoptive local level and fails to resolve private local Acts and is inapplicable in jurisdictions that have no legislation.

The remaining consultation questions beyond Q1 are considered unreasonably biased and irrelevant to stakeholder pedlars.

The impact assessment URN12/606 is considered pathologically delusional.

We urge the Secretary of State to call-in URN12/605 and URN12/606 and engage in stakeholders Third Option Policy with its national legislative amendments at point 6 below as a continuation of government policy during 2008, 2009, 2010, & 2011.

In the absence of any substantive response from BIS to points and questions raised by pedlars willing to enter into this consultation there follows a list of those points and questions that herewith form a partial reply to this consultation.

It is noted that BIS has consistently refused to extend the consultation deadline to enable proper response from pedlar stakeholders and as a result this response is submitted under duress as BIS has failed to clarify or respond to stakeholder’s concerns:

1 Briefing to Minister - 29 September 2012

<http://www.pedlars.info/bis-consultation/126-29-september-2012-briefing-to-minister-re-urn.html>

2 Press Release - 3 December 2012 -How HMG intends to prohibit British pedlars and go against British people as criminals while Britain lays itself open to all others in the EEA...OMG!

<http://www.pedlars.info/news/125-press-release-3-december-2012-hmg-prohibition.html>

3 Briefing & Questions re URN12/605 & 606 - 11 January 2013

<http://www.pedlars.info/bis-consultation/137-11-january-2013-briefing-a-questions-re-urn12605.html>

4 Press Release - 27 January 2013 - Protecting the Crown’s Prerogative Common Law Civil Liberty At Stake

<http://www.pedlars.info/news/148-letter-to-the-editor-27-january-2013.html>

5 BIS draft legislation URN12/605 explained - 10 February 2013

<http://www.pedlars.info/latest-new-bulletin/154-10-february-2013-bis-pedlar-policy-scrutiny.html>

6 Pedlars Act amendments as Third Option - 14 February 2013

<http://www.pedlars.info/latest-new-bulletin/156-14-february-2013-pedlars-act-amendments-as-third-option.html>

Unanswered Written Questions to HMG 11 January 2013

to assist stakeholder's analysis of relevance in responding to URN 12/605 & 606

Q1: HMG to confirm that the profession of Pedlary is recognised under EU law [*Services Directive Recital 31 & Article 4.11*] and that the BIS URN 12/605 proposes to expunge a Crown authorised profession without a full public consultation?

Q2: To confirm that HMG is aware that repealing the civil right of pedlary and imposing, through a different route, regulations with criminal sanctions on pedestrians trading in public infringes *Article 1.5* of the *Services Directive*?

Q3: To confirm that HMG is aware that a Pedlars Certificate provides a pedestrian trader with unfettered access to the public as a common law Social Contract whereas the URN proposes to instigate a system of codified law that is inconsistent with the British constitution and diminishes the aegis of the Crown?

Q4: To confirm that HMG is aware that the last decade of private Acts has made pedlars in those jurisdictions potential victims for 2 reasons:

“only by means of visits from house to house” is **ambiguous** in **interpretation** and pedlars trading between houses suffer seizure of goods without judicial process; BIS propose legislation that is a similar mischief devoid of clear interpretation?

Q5: To confirm that HMG is aware that regardless of interpretation of draft proposals a pedestrian trader carrying no licence is automatically guilty of an offence under the *Local Government (Miscellaneous Provisions) Act 1982 Schedule 4 paragraph 10* for trading without a licence and that this is the evidence that is currently relied upon in private Act jurisdictions to secure convictions by denying factual judicial scrutiny of the pedlar's activity and rights?

Q6: To confirm that HMG is aware of the constitutional crisis caused by the conflict of interest between private parliamentary business and the General Interest when considering the national civil liberty of pedlars' common law rights?

Q7: To confirm that HMG is aware that the *Pedlars Act* has primacy over local adoptive and private subordinate street trading legislation and that private Act sanctions against pedlary are ultra vires in using a private statutory power for a collateral purpose alien to the purpose for which it was granted namely the prohibition of unauthorised street trading?

Q8: To confirm that HMG is aware that the BIS policy change from URN09/542 & URN 11/1074 to URN 12/605 & 606 on the basis that *pedlars will be better off* is **irrational** and defies the logic and moral standard that any sensible person could hope to reach?

Q9: To ask if HMG considers that BIS has acted **reasonably** by denying pedlars proposals for the Third Option to amend the *Pedlars Act* instead of only two Options limited to “do nothing” or “repeal”?

Q10: To ask HMG if refusal by BIS to read, consider, and report stakeholder alternative policy proposals to others in BIS constitutes **bias, procedural impropriety** with **failure to give pedlars an opportunity to be heard, failure to conduct a consultation properly and failure to give adequate reasons for refusal to engage**?

Q11: To ask HMG if BIS has failed stakeholder's **legitimate expectations** following consultations URN 09/542 & URN 11/1074 in that they could reasonably expect URN 12/605 & 606 to have proposed amendments to the *Pedlars Act* and Street Trading Regulation: this failure is on the clear ground that unequivocal assurances were previously made to pedlars as evidenced by pedlars' submissions in June 2012 - six months prior to the latest URN?

Q12: To confirm that HMG is aware that BIS has confirmed to parliament that all adoptive and private street trading Acts are incompatible with the European Convention rendering them currently illegal and that pedlars in those jurisdictions are currently unlawfully penalized as potential victims under the Human Rights Convention?

Q13: To confirm that HMG endorse the Secretary of State for BIS to **call-in / withdraw** the current URN 12/605 and to then consult on *the Option* to retain and amend the *Pedlars Act*; amend the *LGMPA* exemption for pedlary and consider how such amendments impact on private *Acts* – this prior to any further consideration of **new** policy or **new** legislation?

Q14: To confirm that HMG will provide individual responses to each of these 14 questions by the end of January 2013 to enable the possibility for stakeholders to consider such response and assess the relevance of any reply to the URN consultation prior to the deadline for return that pedlars have notified BIS Onikosi should be extended for 3 months?

Stakeholders contend that there are many benefits to the proposed Third Option amendments: 14 February 2013

- 1 The Pedlars Act is the national legislation that by simple amendment can resolve national Pedlary Law;
- 2 The Pedlars Act is a national liberty similar to the vote, the right to use the highway or the right to national health;
- 3 The Pedlars Act is outside the remit of local authorities whose role is to ensure public safety & public health;
- 4 The authority of a pedlar [bona fides - certificate] is issued by the Crown with oversight only by police;
- 5 The authority of a Street Trader [licence] is issued by the local authority with enforcement by council;
- 6 A pedlar is akin to any other pedestrian with 1 difference being the right to move about and trade in public;
- 7 An investment of less than 10 pence a day provides the micro-business of pedlary access to private contracts in public;
- 8 The profession of Pedlary is recognised under EU law - the Services Directive Recital 31 & Article 4.11;
- 9 Any restraint or repression of pedlary is against The Small Business Act for Europe that anchors the Think Small First principle in national policy-making enabling Member States to disregard the SD for any policy contradictory towards micro-enterprises;
- 10 Any attempt to repeal the civil right of pedlary and impose, through a different route, regulations with criminal sanctions on pedestrians trading in public infringes Article 1.5 of the Services Directive;
- 11 Providing guidance within the Pedlars Act on interpretation issues within private Acts resolves unwarranted pedlar prosecution;
- 12 Interpretation clarification can resolve anomalies between the Pedlars Act, the LG(MP)A, the LLAA & all private Acts without unnecessary complication caused by attacking pedlary through circuitous street trading regulation;

- 13 Police income instead of being cut by £49,000 [BIS policy] increases to £170,000+ for certificate fee;
- 14 Local Authority enforcement budgets cut by unnecessary wages for officers employed to bully pedlars;
- 15 Parliamentary time will no longer be required for pedlars petitioning against unnecessary private business;
- 16 Consumers will benefit from greater choice, fair competition & continued diversity in the cultural & economic life;
- 17 The General public will continue to benefit from the dynamic assistance that pedlars have historically contributed to society;
- 18 Children will benefit from their shopping experience from pedlar entertainment and low cost novelties;
- 19 High streets will no longer be monopolised only by greedy corporate business interests;
- 20 Entrepreneurs will have economic access to the public to test thier products & ideas for 10 pence a day;
- 21 Reduction in cost of unemployment benefits if applicants are encouraged into self-employment as pedlars;
- 22 The economic health of a nation is enhanced when government policy provides equal access to economic activity;
- 23 The spiritual health of a nation increases when government policy provides freedom with responsibilty;
- 24 The political health of a nation is enhanced when equality permeates all policy;
- 25 The foundations of good principle are a necessity in changing perception;
- 26 Realising that the Pedlars Act is unique, original & wonderful underlies the Third Option;
- 27 Pedlars Parliamentary Agents are willing and able to help BIS develop good policy and better legislation

Pedlars contend that there are many problems with BIS proposed policy & draft legislation: 10 February 2013

- 1 BIS has failed to consult the 48 million people aged over 17 to be effected by this mischievous policy;
- 2 BIS is attempting to introduce a cultural policy to eliminate a UK cultural profession that is recognised throughout Europe;
- 3 BIS has given no substantive legal basis for repeal - de-regulation with regulation by another route is unlawful;
- 4 BIS uses the European Services Directive to repeal national statute & ignores proposals to amend the national Pedlars Act;
- 5 The proposals are said to be national but are limited only to the few local councils that have adopted the LG(MP)A;
- 6 The proposals may have no effect on the many private Act jurisdictions or those preferring no street

trading regulation;

7 BIS argues that pedlars will be better off with minimum restriction & cost ignoring that they are already minimal;

8 Under the Pedlars Act the pedlar has complete freedom & discretion to choose when, where, what and how to trade;

9 The Pedlars Act provides the public with a liberty that has nothing to do with councils or their licensed street trading;

10 Most shopping streets are less than 150 metres long so after 30 minutes of this proposed regime a pedlar must stop work for 3 hours before he can trade again in the same town - pedlary will not be viable;

11 Trading as a pedlar is not differentiated from selling as a pedlar. Trading involves displaying, talking, & demonstrating and may not lead to selling anything. It is impossible for the pedlar or an officer to determine if a customer is approaching and neither will know when the 10 minute rule begins and ends;

12 A pedlar will have to record a disproportionate amount of factual evidence of every step by time and distance to prevent allegation of an offence and Court prosecution;

13 It is an undeniable fact that local authorities with private Acts rely on criminal prosecution for "acting without a street trading licence" instead of correctly bringing a civil prosecution for "not acting as a pedlar";

14 The meaning of "location" is subjective and therefore unjusticible;

15 If a "location" is never established then neither the 10 minute nor 50 metre rules may apply;

16 Under council designation powers a pedlar may be automatically guilty of an offence if found trading in a designated street and liable to be listed by the Criminal Record Bureau;

17 It is not possible to reach a common sense interpretation of a designation with effect on "all persons" nor why BIS intend UK nationals to have less rights than EEA nationals;

18 A designation effecting "all persons" seems to include shoppers, police, council bullies, vagrants & street sweepers;

19 The policy seems to require a person to obtain a local licence in each and every jurisdictions intended to trade;

20 Licences can be withdrawn for failure to attend a pitch, for not trading on particular days, for trading in other goods and can be refused without evidential basis on grounds of insufficient space;

21 No pedlar will be able to monitor or challenge randomly timed designation resolutions in some 420 council jurisdictions;

22 The policy exposes pedlars and the public to pre 1871 fiefdoms ruled by enforcers, bullies, rogues & vagabonds;

23 The BIS definition of pedlary attempts to prescribe legislation in a series of random measurements void of legal transparency;

24 Council officers have no powers of identification for prosecuting villains and vagrants who can give

false names & addresses;

25 Costs of increased police attendance has not been considered in the Impact Assessment URN12/606;

26 Police income from certification cut by £49,000 but increased by the cost of attending councils need for identification;

27 Pedlars contend that it is unjust to give enforcement powers to councils whose lobbyists campaign to get rid of pedlars;

28 The policy will discriminate against persons unable to read or write, those with short-term memory; those unskilled in estimating distances or time-lapses & those less able to keep contemporaneous notes of every movement;

29 The famous London onion-man is a potential victim as his bicycle is longer than 1 metre

Question 1.1 If you are a police force:

(i) what is the approximate annual cost of administering the pedlar certification scheme?

(ii) what impacts would repeal of the Acts have in terms of cost, time and/ or other factors?

Comments:

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Question 1.2: If you are a pedlar: what do you consider are the impacts of repeal, both in terms of costs, time and/ or other factors?

Comments

See above

Question 1.3: Do you consider that repeal would have an impact on any other organisation, individual or group? If so, please provide details of that organisation etc and what you consider the impacts on them would be.

Comments

See above

Question 2: Do you agree with our proposed new definition of a pedlar for the purposes of the pedlar exemption from the “national” street trading regime in England and Wales?

☐ Yes

☒ **tick** No

Please fully explain your reasons for agreeing or disagreeing with any element of the proposed definition.

Comments:

See 5 above

<http://www.pedlars.info/latest-new-bulletin/154-10-february-2013-bis-pedlar-policy-scrutiny.html>
scroll to end of document to see list of problems

Amendments to Schedule 4 to the LG(MP)A

Question 3: If you are a local authority, do you envisage that there might be circumstances in which you would be able to designate a street as a licence/ consent street in relation to established traders but not in relation to temporary traders?

☐ Yes

☐ No

Comments:

Question 4: Do you agree that only one photo needs to be submitted with street trading applications which are made electronically?

☐ Yes

☐ No

Comments:

Question 5: Do you agree with the proposal to replace the mandatory refusal ground? If not, please explain why you do not think that the 1933 Act provides adequate protection and why the minimum age requirement of 17 needs to be retained. (see paragraph 1.32).

☐ Yes

☐ No

Comments:

Question 5.1: If you are a local authority, can you indicate the approximate number of applications you expect to be made from those under 17 years of age? would

Comments:

Question 6: Would it be helpful for BIS to issue guidance on the circumstances in which the discretionary

grounds in 3(6) (a), (d), (e) and (f) can be used?
paragraphs 1.33 and 1.34 above).

(see

☐ Yes

☐ No

Comments:

Question 7: Do you think there are any circumstances in which the existing paragraph 3(6)(b) ground could be used compatibly with the Directive and, if so, please give reasons. (see paragraphs 1.36 - 1.37).

☐ Yes

☐ No

Comments:

Question 7.1: Do you consider that it is necessary to insert a new replacement “suitability” refusal ground into paragraph 3(6)? (see paragraph 1.38)

☐ Yes

☐ No

Comments:

Question 7.2: In relation to this new ground, can you tell us:

(i) In what circumstances you would use this ground and how often?

(ii) Whether this ground would produce costs on you as a local authority, or on you as a business and what these costs are likely to be?

☐ Yes

☐ No

Comments:

Question 7.3: Would it be helpful for BIS to issue guidance on the circumstances in which this replacement ground could be used?

☐ Yes

☐ No

Comments:

Question 8: Do you think there are any circumstances in which either of these grounds could be used compatibly with the Directive in relation to temporary traders? (see paragraphs 1.39 -1.42)

☐ Yes

☐ No

Comments:

Question 8:1: Do you think it would be preferable to pursue our proposed approach of expressly preventing the grounds from being used in relation to temporary traders or to repeal the grounds completely?

☐ Yes

☐ No

Comments:

Question 8.2: Will local authorities continue to use these grounds in relation to established traders?

☐ Yes

☐ No

Comments:

Question 8.3: Do you foresee any difficulties with our proposals to limit the circumstances in which grounds could be used in relation to traders? these established

☐ Yes ☐ No

Comments:

Question 9: Do you foresee any problem resulting from the proposed repeal of paragraph 3(8) of Schedule 4 LG(MP)A? (see paragraph 1.43) to the

☐ Yes ☐ No

Comments:

Question 9.1: Do you agree with our assumption that those who may benefit from this provision are more likely to be UK nationals than nationals of other Member States?

☐ Yes ☐ No

Comments:

Question 10: Do you foresee any problems with our proposal to give local authorities flexibility to grant licences for longer than 12 months or indefinitely? (see paragraphs 1.44 – 1.47)

☐ Yes

☐ No

Comments:

If you are a local authority can you further tell us

Question 10.1: Whether lengthening the duration of licences would have a positive, negative or neutral impact on the ability of new street traders to obtain licences to trade in your licence streets?

☐ Yes

☐ No

Comments:

Question 10.2:

(i) Whether you are likely to issue licences for more than a 12 month period of indefinitely?

☐ Yes ☐ No

(ii) If you are likely to issue licences for a defined period which is longer than 12 months, what period you are likely to choose?

Comments:

Question 11: Would it be helpful for BIS to issue guidance as to how the PSR may affect a local authority's ability to use some or all of the revocation grounds contained in paragraphs 5(1)(a) to (c) in relation to established traders/temporary traders? (see paragraphs 1.48 – 1.50)

☐ Yes ☐ No

Comments:

Question 11.1: Do you think there are circumstances in which the paragraph 5(1)(d) ground could be used compatibly with the Directive in relation to temporary traders?

☐ Yes

☐ No

Comments:

Question 11.2: (i) Do you think it would be preferable to pursue our proposed approach of expressly preventing that ground from being used in relation to temporary traders or to repeal the ground completely?

☐ Yes

☐ No

(ii) Will local authorities continue to use that ground in relation to established traders?

☐ Yes

☐ No

Comments:

Question 11.3: Do you foresee any difficulties with our proposals to limit the circumstances in which that

ground can be used in relation to
traders?

established

☐ Yes

☐ No

Comments:

Question 12: Do you foresee any problems with our proposals -
To disapply regulation 19(5) of the PSR where a mandatory ground for
refusal of the application exists; or

☐ Yes

☐ No

To leave it to local authorities to decide whether to put arrangements in
place to disapply the regulation in other circumstances, or to specify what
conditions will automatically attach to a licence which is deemed to have
been granted under regulation 19(5)? Please give reasons for your views
(see paragraphs 1.51 – 1.53)

☐ Yes

☐ No

Comments:

Question 13: Do you foresee any problems with our proposals to allow local authorities to relax the prohibition in paragraph 7(7) in its entirety where appropriate? (see paragraphs 1.54 -1.57)

☐ Yes

☐ No

Comments:

Question 14: Do you foresee any problems with our proposals to amend paragraph 10(1)(d)? (See paragraph 1.59)

☐ Yes

☐ No

Comments:

Question 15: Please can local authorities tell us about any other local Acts regulating street trading which are not listed at Annex B of this document (or any Acts listed in Annex B which have in fact been repealed).

Comments:

Question 15.1: Please can local authorities tell us-

(i) whether having screened your local street trading Acts for compliance with the Directive, amendments /repeals need to be made to that legislation;

(ii) if such amendments/ repeals are needed whether you wish us to include them in our regulations.

Comments:

Question 16: Please can local authorities tell us-

(i) what consequential amendments are needed to the provisions listed in Annex C as a result of the repeal of the Pedlars Acts (and provide appropriately drafted provisions);

(ii) whether any consequential amendments are needed to other provisions of local Acts as a result of the repeal of the Pedlars Acts (and, if so, provide appropriately drafted provisions);

(iii) if any of the provisions listed in Annex C are no longer in force.

Comments:

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Question 17: Can local authorities tell us-

(i) what consequential amendments are required to the provisions of local Acts listed above at paragraph 1.73 as a result of our proposed amendments to Schedule 4 to the LG(MP)A, and provide appropriately drafted provisions?

(ii) whether (and, if so, what) consequential amendments are required to any other provisions of local Acts as a result of our proposed amendments to Schedule 4 to the LG(MP)A (and again provide appropriately drafted provisions)?

Comments:

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Do you have any other comments that might aid the consultation process as a whole? Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Comments:

Pedlars consider this consultation not fit for purpose and intended only to seek endorsement of an ill-conceived agenda.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply ☐ **tick please acknowledge to**
pedlars.admin@gmail.com and robert@pedlars.info

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

☐ Yes

☐ **tick No**

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