

Bournemouth Borough Council and Manchester City Council

Responses to Questions 15 to 17 in the BIS Consultation on Street Trading and Pedlary (November 2012)

This paper is the joint response of Bournemouth Borough Council and Manchester City Council to questions 15 to 17 of in the BIS Consultation on Street Trading and Pedlary (November 2012).

The councils are responding separately to questions 1 to 14.

General note: The councils have been asked to come forward with amendments to their private legislation so that it can be “slotted in” to the proposed regulations. If as a result of the consultation exercise, the department intends to make changes to its proposed draft regulations, then the two councils **must** be given the opportunity to consider them, in order to see whether further consequential changes to their amendments are required.

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street trading which are not listed at Annex B of this document (or any Acts listed in Annex B which have in fact been repealed).

Response: Neither of the councils is aware of any other local Acts which affect their areas.

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;

The 2010 Acts

The Bournemouth Borough Council Act 2010 and the Manchester City Council Act 2010 were promoted by the councils together and are to all intents and purposes identical.

The councils have taken the advice of leading and junior counsel on the question of whether the two Acts are compatible with the Directive and counsels’ advice is that they are. No amendments or repeals need to be made to the Acts for reasons of incompatibility.

The Greater Manchester Act 1981

Manchester City Council no longer regulates street trading in the City under Head A (sections 122 to 135) of Part XV of the 1981 Act, because it has adopted the provisions of the 1982 Act.

The City Council would be content for Head A to be repealed in its entirety. There are provisions in it that are potentially incompatible, and on that basis, they would take up the suggestion in paragraph 1.62 of the consultation document as regards certain other legislation, that Heading A be repealed.

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

Yes, as regards the 1981 Act.

If you do wish us to include them in our regulations, please provide us with:

(a) appropriately drafted provisions to achieve the amendments/repeals and any consequential amendments that are needed to local legislation,

(b) an explanation of why all those provisions are needed and

(c) if any consequential amendments are needed to general legislation, an explanation of what is needed

The proposed repeals are set out in the appendix to this response.

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);

The 2010 Acts

There would be consequential amendments required to the Bournemouth and Manchester Acts for two main reasons:

- The two Acts refer in terms to the Pedlars Act 1871
- The provisions in the Acts which restrict the activities of pedlars expressly say that nothing in them shall be taken to extend the range of activities that comprise acting as a pedlar (see section 5(2) of each Act). The “range of activities that comprise acting as a pedlar” is a reference to those activities that fall within the ambit of the Pedlars Acts, as considered in a number of cases over the years. If the Pedlars Acts are to be repealed and replaced with a new definition of what constitutes pedlar activities, then further adjustments need to be made to the Bournemouth and Manchester Acts.

Amendments have been drafted and are appended to this response and an explanation follows. The amendments to both Acts are identical.

Using the Bournemouth paragraph numbering:

2(2)(a): Required in order to replace a reference to the Pedlars Act 1871

2(2)(b): Required to ensure that pedlars trade on foot at all times

2(2)(c): Drafting amendment

2(2)(d): Modernising the reference to “goods and handicraft equipment” which may have sat well with the background of the Pedlars Act but not without it. The wording used in the BIS draft regulations has been adopted

2(3) and 2(4): the existing sub-paragraph (2A)(e) needs to be repealed because it relates to the carrying of a pedlar’s certificate. It is proposed to be replaced by a new paragraph (e) which provides that a pedlar would have to have arrived on foot to the place where he trades. This requirement follows the recent case of *Jones v Bath and North East Somerset Council* ([2012] EWHC 1361 (Admin)). In order to avoid any difficulties as regards temporary traders, it is made clear that persons arriving by sea or air could trade so long as they arrived at the place where they traded on foot.

2(5): Section 5(2) of each Act is not required any more. It says that nothing in section 5(1) shall be taken to extend the range of activities that comprise acting as a pedlar (harking back to the Pedlars Acts and case law).

(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);

See above as regards the Greater Manchester Act 1981. The reference to a pedlar's certificate in section 135 would need to be altered, but the council proposes that the whole of Head A of Part XV of the Act be repealed.

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

Section 135 of the Greater Manchester Act 1981 remains in force but as mentioned above, the City Council would be content for it to be repealed.

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?

The councils do not consider that any other consequential amendments to the 2010 Acts are required.

(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)?

There are no other local Acts of relevance in the councils' areas.

Sharpe Pritchard

15 March 2013

APPENDIX

Manchester City Council and Bournemouth Borough Council

Proposals for Amendments to be included in the Proposed Street Trading and Pedlary Regulations 2013

Part [*]

Provisions applying to the Borough of Bournemouth and the City of Manchester

Exemption for pedlars from street trading regime

1. The provisions of paragraphs 1(2A) to (2G) of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 inserted by regulation 4(3) above do not apply in relation to the Borough of Bournemouth and the City of Manchester.

Amendments to Bournemouth Borough Council Act 2010

2.—(1) The Bournemouth Borough Council Act 2010(a) is amended as follows.

(2) In section 5(1)(a)—

- (a) for “in paragraph 1(2)(a) of that Schedule there were inserted, after the reference to the Pedlars Act 1871, the words “,” substitute—

“after paragraph 1(2) there were inserted—

“(2A) For the purposes of sub-paragraph (2)(a) above, a person trades as a pedlar”;

- (b) after “carried out” insert “only on foot and”;
- (c) renumber the inserted sub-paragraphs (i), (ii) and (iii) as sub-paragraphs (a), (b) and (c);
- (d) for “goods or handicraft equipment” in both places where those words appear substitute “article which the person is selling or exposing or offering for sale, and any article used by him while trading for a purpose connected with the trading”.

(3) For sub-paragraph 1(2A)(e) of Schedule 4 to the 1982 Act as inserted by section 5(1)(b), substitute—

- “(e) he trades only in articles which he brought only on foot from the place where the articles were kept overnight to the place where he first trades on the day in question.”.

(a) c. ii.

(4) After sub-paragraph 1(2C) of Schedule 4 to the 1982 Act as so inserted, insert the following sub-paragraph to be so inserted—

“(2D) For the purposes of sub-paragraph (2A)(e) above, if the articles were kept overnight outside mainland England, Wales or Scotland, and were brought to the mainland by ship, boat or other similar vessel or by aircraft, the requirement to bring the articles only on foot shall be read as a requirement to bring the articles on foot from the place where the person disembarked from the ship, boat or other similar vessel or aircraft.”.

(5) Section 5(2) is omitted.

Amendments to Manchester City Council Act 2010

3.—(1) The Manchester City Council Act 2010**(b)** is amended as follows.

(2) In section 5(1)(a)—

(a) for “in paragraph 1(2)(a) of that Schedule there were inserted, after the reference to the Pedlars Act 1871, the words “,” substitute—

“after paragraph 1(2) there were inserted—

“(2AA) For the purposes of sub-paragraph (2)(a) above, a person trades as a pedlar”.

(b) after “carried out” insert “only on foot and”;

(c) renumber the inserted sub-paragraphs (i), (ii) and (iii) as sub-paragraphs (a), (b) and (c);

(d) for “goods or handicraft equipment” in both places where those words appear substitute “article which the person is selling or exposing or offering for sale, and any article used by him while trading for a purpose connected with the trading”.

(3) For sub-paragraph 1(2A)(e) of Schedule 4 to the 1982 as inserted by section 5(1)(b) substitute—

“(e) he trades only in articles which he brought only on foot from the place where the articles were kept overnight to the place where he first trades on the day in question.”.

(4) After sub-paragraph 1(2C) of Schedule 4 to the 1982 Act as so inserted, insert the following sub-paragraph to be so inserted—

“(2D) For the purposes of sub-paragraph (2A)(e) above, if the articles were kept overnight outside mainland England, Wales or Scotland, and were brought to the mainland by ship, boat or other similar vessel or by aircraft, the requirement to bring the articles only on foot shall be read as a requirement to bring the articles on foot from the place where the person disembarked from the ship, boat or other similar vessel or aircraft.”.

(b) c. iii

(5) Section 5(2) is omitted.

Repeal of provisions of Greater Manchester Act 1981

4. The following provisions of the Greater Manchester Act 1981^(c) are repealed—

- (a) in the definition of “street” in section 2(1), the words “, except in section 122 (Interpretation of Head A of Part XV) of this Act,”;
- (b) Head A of Part XV.

^(c) c. ix.