



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 February 2013**.

Name: Councillor Mrs S. Hawke
Organisation (if applicable): Test Valley Borough Council
Address: Beech Hurst, Weyhill Road, Andover Hants, SP10 3AJ

Please return completed forms to:

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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 type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input checked="" type="checkbox"/>	Local Government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

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 ☐ **No**

Comments:

The law at present is antiquated and difficult to regulate. Some pedlars take advantage of this situation. Licensed Street Traders and Market Traders can be resentful of this situation, arguing that they have to pay a fee and that their activities are more rigorously regulated.

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

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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

Repeal will have a positive impact on licensed traders and those trading on Markets by promoting a more equitable approach.

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

☐ **No**

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

Comments:

The proposed definition in limiting the time a pedlar can stop to trade, the frequency of trading in one area and limits on the distance from one trading area to another will give clarity, as far as is possible, and will facilitate a uniform approach to regulating pedlar activity. However such parameters could require the local authority to undertake proactive monitoring.
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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:

Implementation of the proposed amendments will still allow the Council's current authorisation scheme to permit the designation of streets as Consent Streets for established traders. However to keep the current requirement to authorise temporary traders might prove difficult as such a policy could potentially be in breach of Article 6 of the Directive. It is not envisaged that there will be an issue with discrimination but the Council would have to justify the necessity and proportionality of such authorisations in all cases and even though there are circumstances where the authorisation is appropriate due to a history of anti- social behaviour or traffic issues, for example, there will be other cases where such concerns are not applicable.

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

Yes ☐ No

Comments:

This amendment does not pose a problem as the Council's authorisation scheme only requires one photograph.

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:

With such a proposal the Council's Policy will have to be amended to broaden the number of consultee organisations to include those that can comment on child protection in accordance with Part II of the Children & Young Persons Act 1933 e.g. the Children's Services Team within the Hampshire County Council Social Services.

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

Comments:

The current authorisation scheme was introduced 8 years ago and in that time no applications have been received from persons less than 17 years of age so it is not possible to predict what could be expected in the future.

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? (see paragraphs 1.33 and 1.34 above).

Yes ☐ No

Comments:

The Council's authorisation scheme has used the discretionary grounds contained in Paragraph 3 (insufficient space, applicant's unsuitability and failure to pay/fees/charges) to good effect but guidance on interpretation is always useful.

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:

This requirement does appear to be in breach of the Directive as it simply states a ground for refusal based on sufficient provision of existing shops/traders trading in the applicant's goods. However it is envisaged that its repeal could cause complaints to the Council from local retailers and those organisations representing local business. Test Valley Borough Council has used this provision to refuse licence applications in the past so its repeal would mean that the local authority would have to either grant the application or justify that the application is not suitable for the location in question. This could prove more challenging and more likely to give rise to an appeal as the term "suitability" is very subjective.

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:

Such a replacement refusal ground would be welcomed in order to give the Council some flexibility in addition to the existing discretionary grounds for refusal. However as the word "suitability" is open to interpretation guidance would definitely be needed for the reasons given in Q7 above.

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:

The consultee organisations/agencies included in the Council authorisation scheme, following advice on the definition of the term and guidance on its use will be asked to comment on any application in terms of its suitability. It is anticipated that it will be used in terms of anti-social behaviour, nuisance or danger to public safety. Therefore this ground could be used a couple of times each year.

It is not envisaged that this change will directly incur significant extra costs in the administration of the Council's authorisation scheme. However as the term "suitability" is vague there could be a legal challenge resulting in significant costs to the Council.

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:

As for response to Question 7.1

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:

The current provisions of Paragraph 3(6)c (applicant wants to trade for too few days) and Paragraph 3(6)g (applicant fails to avail themselves of a previous licence) cannot be grounds for refusal under the provisions of the Directive as the very nature of these types of application effectively breach these grounds.

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:

Repeal of these provisions for Temporary Trader applications is appropriate .

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

Yes

☐ No

Comments:

There is value in keeping these discretionary grounds for established trader applications as there have been incidents where a Consent has been granted and yet the trader has not traded so preventing another trader applying to operate in that place.

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

Yes

☐ No

Comments:

These grounds for refusal of a Consent are not used very often but if the grounds remain it is suggested that they allow other traders to apply for limited trading places and so support the economy and trade in accordance with the spirit of the Directive.

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

☐ Yes

No

Comments:

The Council's authorisation scheme does not give preferential treatment to persons previously licenced under local legislation therefore the proposed repeal of this provision will have no impact.

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:

Such a provision does indirectly discrimination against new applicants.

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:

The flexibility to grant licences for longer than 12 months has advantages as long as any first time licences are still only granted for a 6 month probation period.

Test Valley Borough Council has consulted with a number of its traders on this proposed change and they are generally supportive of it as long as new trading consents are issued on a probationary basis and that 12 month licences are still available to those who apply for it.

Finally licensing a trader indefinitely, with only the provision to revoke for breach of conditions could result in a loss of income for the Council.

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:

The granting of licences indefinitely could prevent other new applications as the availability of trading areas is inevitably restricted.

Question 10.2:

(i) Whether you are likely to issue licences for more than a 12 month period or 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:

18 months – 24 months subject to no condition breaches. Such time periods are supported by the traders consulted.

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:

Guidance on the application of the Provision of Services Regulations 2009 on Street Trading would be of assistance.

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:

Paragraph 5 deals with the revocation of Licences and specifically 5(1)(d) concerns an applicant failing to avail themselves of a previous licence therefore this cannot be grounds for refusal under the provisions of the Directive as the very nature of these types of application effectively breach these grounds.

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:

There is value in keeping these discretionary grounds for established trader applications as there have been incidents where a Consent has been granted and yet the trader has not traded so preventing another trader applying to operate in that place.

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 established traders?

Yes

☐ No

Comments:

These grounds for refusal of a Consent are not used very often but if the grounds remain it is suggested that they allow other traders to apply for limited trading places and so support the economy and trade in accordance with the spirit of the Directive.

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:

As Regulation 19(5) relates to the automatic granting of a licence/consent if the application is not processed within a set period it is considered appropriate that if a mandatory ground for refusal exists then the licence should not be granted by default. Similarly it is agreed that local authorities should have the discretion to disapply the requirement in order that local needs and circumstances can be met.

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:

Relaxing the prohibition of the type of vehicle, stall or barrow from which a temporary trader sells would not cause a conflict as the Council's authorisation scheme already embraces this flexibility.

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

☐ Yes

No

Comments:

Paragraph 10 (street trading offences) will need to be amended to reflect the proposed changes.

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:

No local Acts are used in the Council's area to control Street Trading.

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:

N/A

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:

N/A

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:

N/A

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:

None

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 ☒ X

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

☐ No

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