

City Remembrancer's Office

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City Remembrancer

Ms Rachel Onikosi
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET



Telephone 020 7332 1201
Email philip.saunders
@cityoflondon.gov.uk

Your ref
Our ref

Date 21st March 2013

Dear Ms Onikosi

Introduction

This is the City of London Corporation's response to the BIS consultation on street trading and pedlary.

As a general matter, the street trading provisions of the Local Government (Miscellaneous Provisions) Act 1982 do not apply to the City. The City's street trading code is contained in an entirely separate legislative scheme, most recently to be found in the City of London (Various Powers) Act 1987. As BIS will be aware, there is a general prohibition on street trading in the City. Nevertheless, the provisions in the 1987 Act dealing with street trading in the area of the City where it is currently permitted, namely Middlesex Street, are the same or similar to the drafting in Schedule 4 to the 1982 Act.

Consultation paragraph 1.35

At paragraph 1.35 et seq the consultation examines paragraph 3(6)(b) of Schedule 4 to the 1982 Act. This provision is analogous to the City's own legislation in section 8(5)(c) of the 1987 Act, which states

(5) The Corporation may refuse to grant or renew a street trading licence or may at any time revoke or vary a street trading licence granted by them if –

...

(c) there are in the opinion of the Corporation already enough traders trading in Middlesex Street from shops or otherwise in the articles or things in which the applicant desires to trade;

The consultation proposes the complete repeal of this ground.

The City opposes the removal of a power to regulate the range of articles or goods for sale from the stalls in a market. The operation of such a power provides a valuable tool to ensure the vitality and attractiveness of a market environment. The need for a “vibrant and diverse shopping experience” is extolled¹ by Mary Portas in her Review sponsored by the Prime Minister and the Deputy Prime Minister. As you will be aware, the BIS select committee’s current inquiry into the UK retail sector includes scrutiny of support for the sector and on the progress in implementing the recommendations of the Portas Review. There are, therefore, significant issues of public policy and of social policy to be addressed in relation to this ground.

At the City’s Middlesex Street market there is evidence that if left unregulated the market would become dominated – in due course, exclusively – by clothes stalls. The effect would be to lessen the attractiveness of the market, discourage footfall and reduce the economic prosperity of the market area.

We do not believe that such a ground is inconsistent with the Services Directive. This would not be a matter of using case-by-case assessments but of adopting a general strategy in relation to the whole of any given market.

Consultation paragraph 1.39

The consultation proposes a restriction on the use of paragraph 3(6)(g) of Schedule 4 to the 1982 Act in relation to under-utilisation of a street trading licence. This provision is somewhat analogous to section 8(5)(g) of the City’s 1987 Act which states

...

(g) the licensee personally has for a period of not less than four weeks not exercised, or not fully exercised, his rights under the licence

The consultation asserts that temporary traders would be discriminated against by this rule but does not explain BIS’s reasoning – other than a reference to Article 16 of the EU Services Directive. A power to revoke, vary or not renew a licence that has not been used or has been under-used is not, in its nature, discriminatory to temporary traders. Requiring a temporary trader to utilise his licence does not disadvantage a temporary trader to any greater extent than an established trader. Furthermore, the provision in s 8(5)(g) is not a barrier to a temporary trader operating in the City’s street market.

The City wishes to retain the existing power under (g) in order to ensure a lively market environment of fully tenanted stalls

¹ Portas Review, page 19

Legislative changes

Should it be necessary following the outcome of the consultation, the City of London will include any amendments required to the 1987 Act within its own Various Powers Bill currently passing through Parliament. If, however, the Bill's timing does not fit with the implementation of the Department's recommendations and the City's legislation requires modification, the City will submit draft clauses for inclusion in the portmanteau regulations proposed by BIS in the consultation at paragraph 1.64 (ii).

Yours sincerely

A handwritten signature in black ink, appearing to be 'P. Saunders', written in a cursive style.

Philip Saunders
Parliamentary Affairs Counsel