



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: Rachel Andrew

Organisation (if applicable): Gloucestershire Licensing Officers Group
(represents Licensing Officers from 6 district authorities in Gloucestershire)

Address: Licensing Section, Stroud District Council, Ebley Mill, Westward Road, Stroud, Gloucestershire, GL45 4UB

Please return completed forms to:

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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.

☐

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The Act is very outdated

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:

Not applicable

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

Not applicable

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

Currently under the Pedlars scheme a character check takes place. Repeal of this could lead to more unscrupulous pedlars who in turn could be more likely to sell faulty goods. This could impact on the consumer. However in reality current checks under the Pedlar scheme are very limited so there is unlikely to be much change to the current situation

Repeal of the Pedlars scheme could lead to more work for local authorities. Previously the Police took responsibility to determine who fell under the Pedlar regime, it will now be the responsibility of the Local Authorities to identify who falls under the Pedlar exemption

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:

Yes this definition is definitely better than the current one under the Pedlars Act.

However we have identified a few loopholes (although these do also exist under the current regime)

The definition gives no stipulation as to how many pedlars can be in any one location which means there could be a high number in a small area.

Also a group of pedlars working together could rotate a pitch so that when one moves on another fills his space. The definition does not seem to require the pedlar to take his/her wares when he/she moves so they could leave them on the pitch and a second pedlar take over.

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:

The group did have mixed views on this however the majority thought yes.

It was raised that having to refer to another Act and then checking if they met the requirement of this Act ie of school leaving age was more complex than having a set age.

Additionally it was questioned about prosecution of young persons for breaches of licence as under 17 classed as young offender.

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:

Currently we do not have any under 18 in the County so we think very few

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:

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:

Circumstances include, road safety, nuisance such as smell and noise, obstruction

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:

We feel the grounds should be kept in relation to established traders. The reason is that licences could be applied for but sites not used in order to prevent competition for traders on other sites (site hogs). However it does seem unfair to treat the two groups differently

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 these grounds could be used in relation to established traders?

☐ Yes

☒ No

Comments:

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:

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:

No provided there is flexibility. Local authorities can make the decision based on local issues

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:

Mainly neutral however lengthening the duration of licences may have a negative impact as the likelihood of local authorities taking away a licence that is not being is more likely to happen at renewal rather than revoking a licence mid-term

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:

No more than 3 years

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 established traders?

☐ 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:

No local acts in Gloucestershire

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:

Not applicable

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:

None

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:

None

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:

What provisions would be put place for streets already designated and licences/consents already granted under criteria which may no longer meet the directives. Must streets be redesignated, or should there be grandfather rights for existing traders.

How will the rules for Pedlars be publicised. As they do not need any consent they will not have any contact with any authority so it will be difficult for local authorities to pass the rules on to them.

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 ☒

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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