



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: Andy Netherton

Organisation (if applicable): Plymouth City Council

Address: Public Protection Service, Civic Centre, Plymouth, PL1 2AA

Please return completed forms to:

Name: Rachel Onikosi, Policy Manager

Postal address: Department of Business, Innovation and Skills
Consumer and Competition Policy Directorate,
1 Victoria Street, London,
SW1H 0ET

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:

We understand the need to repeal the Pedlars Act but believe suitable controls must be implemented in its place

Pedlars cause problems either in respect of their trading in commercial and retail areas and more importantly affecting vulnerable residents with cold calling. This has prompted many residents' associations to set up No Cold Calling Zones, but there are difficulties with enforcement.

It is important that councils are able to effectively manage their town centres and streets to encourage economic growth, while still protecting their residents and visitors from fraud and nuisance. While councils and the police will retain powers to tackle illegal activity, such as selling counterfeit goods, harassment and fraud, councils will be unable to address ongoing resident and business concerns about pedlar activity in their communities.

The proposals by BIS fail to recognise the unease that can be associated with itinerant business, which has been exemplified in recent years by concerns about face to face fundraisers and scrap metal collection.

Residents and businesses suffer from the cumulative impact of such activity and often want their council to respond to their concerns. We strongly believe that further thought needs to be given to what measures can be made easily available to councils where specific and persistent issues occur associated with pedlar activity.

As with most regulatory activity, a balance needs to be struck between ensuring the free market intentions of the Directive are adhered to whilst at the same time respecting the needs of communities and dealing effectively with street trading or pedlar activity that creates concern.

We believe that a new EU compliant registration or licensing scheme may provide suitable controls, accompanied by legislation to control the activities of pedlars. The proposed definition of pedlar may be suitable to control activities in commercial retail settings but does not control cold calling and risks to the vulnerable.

A registration scheme may not be within scope of the services directive but may be affected by the national applicability of licenses; the details of which are subject to a separate consultation

Legislative provisions could make it illegal for pedlars to visit designated no cold calling areas – the details of how these would be designated would have to be discussed and determined. Alternatively there could be no cold calling signs that can be displayed at individual properties.

As such, these powers would only be used in a proportionate manner to target specific concerns and in full consultation with local communities.

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:

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

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

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:

We would wish to amend wording of paragraph 1.18 so that “receptacle must be pushed or pulled by foot” to avoid mechanical means of movement. It appears to be the intention of the proposal to limit pedlars to trading on foot.

Locally the control of pedlars are an important problem for our large public open events. Pedlars cause issues for two reasons:

1 – They trade and attract groups of people potential in high crowd flow area or escape routes causing public safety issues

2 – Some events, although free and open to the public are sponsored. These sponsorship contracts often specify very detailed controls on the presence of mobile traders and the selling of other products or services. The current proposals would allow these pedlars to access the areas and trade with very little control – thereby affecting the sponsorship contract.

One potential remedy would be for the LA to designate areas where pedlar would need prior approval. These designations could be time limited and for specified reasons so as to be compliant with Directive requirements and maintain the spirit of pedlars activities at all other times.

Designation should be as efficient as possible and could be a matter suitable for a Licensing Committee

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:

There are areas within the City that are of historic importance and consists of conservation areas. The Council has a current policy to restrict the number and location of established traders in these specific areas. This prevents temporary traders other than by way of prior approval for specific events or activities.

The restriction of temporary traders would meet Article 16 due to the need to protect the built environment and may be a public policy.

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:

Our initial concern relates to young persons being able to trade in products that have a minimum age requirement, e.g. knives, alcohol, tobacco etc.

We have concerns with the ability of a minor to enter into any contractual relationships, but also the prospect and barriers to enforcement of the street trading regime.

Our standard conditions would require the provision of public and employer liability insurance, both of which would not be obtainable by a minor.

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:

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:

Any central guidance would assist in the consistent approach and interpretation by LAs, traders and Business Improvement Districts

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:

There may be some situations where to protect public health a limit on the availability of certain goods may be required, e.g. alcohol, fast food etc. Many LAs have cumulative impact areas to restrict alcohol sales and some LAs have controls on unhealthy food outlets near to sensitive locations such as schools. This is included in planning policy and would be a loop hole if mobile traders were exempt.

In these cases it may be in the over riding public interest and for public health grounds to limit the number of outlets.

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:

The suggested wording would be able to accommodate the issues of public health raised in our previous comment.

“Suitability” would have to be addressed within any local Street Trading Policy to provide clarity and consistency

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:

There are two main occasions when this may be used:

1 – To protect public health or safety – For example to limit the number of fast food outlets, alcohol, tobacco

2 – To protect the local amenity – For example tourist areas or those in conservation areas may wish to control the range and scales of certain goods. A LA may wish to restrict the type of goods sold to ensure an adequate range and quality of offer for the public.

We can see no extra costs provided the issue is adequately addressed in any local Street Trading Policy

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:

Any guidance would assist in consistency for LAs, businesses and Business Improvement districts.

Any guidance should be outcome focused with examples so it does not provide a barrier to innovation and the ability to change in line with a change to business or Local Authority practice

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:

If there are any potential conflicts it would be better to amend the wording that meets the Directive requirements but still try to maintain the original intention. In this case the mischief is to prevent the blocking of commercially viable pitches in order to prevent competition – clearly this in itself does not confirm to the intentions of the Directive to promote competition. This is more important where the number of pitches available is limited within a geographic area. It is therefore rightly an issue for Government and LAs to control

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:

Temporary traders must not be able to block other traders from commercially viable sites by trading on a limited number of times each week.

We believe that this is a potential issue that needs addressing and the legislation should be reworded – this may be an issue that could be addressed during any application/tender process or an issue that the Council may consider appropriate at time of the renewal

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

☒ Yes

☐ No

Comments:

In this case the mischief is to prevent the blocking of commercially viable pitches in order to prevent competition – clearly this in itself does not confirm to the intentions of the Directive to promote competition. This is more important where the number of pitches available is limited within a geographic area. It is therefore rightly an issue for Government and LAs to control

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:

This meets the mischief of the legislation

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:

Potential new traders will assist in maintaining standards and compliance issues

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:

Flexibility would allow LAs to decide locally on the advantages from having a longer licence.

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:

For those pitches which are static and in effect become a retail premise (albeit from a movable structure) they become no different than a normal retail shop. Long term licences allow for greater business certainty and therefore investment and the ability to obtain financial support. Static traders allow low profit services to be offered with minimal overheads and allows the provision

of services that may not be viable from fixed permanent retail outlets.

A longer term fixed period licence will allow for better business planning but allow access to new traders at set periods.

Longer term licences would also reduce administrative burdens to both the business and LA

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:

It would seem appropriate to issue licences for a 3 or 5 year period subject to the area, services/goods on offer, local planning and economic development strategies or plans, knowledge of supply and demand and the previous history of the applicant

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:

Refer to comments on question 7 generally and would be necessary where longer term licences may be issued

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:

Plymouth City Council Act 1987 s11 &s12

S11 Controls in relation to touting and photography in the street
S12 registration of hair dressers

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:

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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:

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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Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

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