



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**.

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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.

<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The Pedlars Acts are way out of date with current times and there are so many loopholes in it that it makes it hard to strictly enforce it. For instance we have recently as an Authority successfully challenged an appeal where the judge made the following ruling

Jones v Bath and North East Somerset Council
Queen's Bench Division (Administrative Court)

04 May 2012

Case AnalysisWhere Reported[2012] EWHC 1361 (Admin); Official Transcript
Case DigestSubject: Criminal law Other related subjects: Local government; Licensing

Keywords: Licensing offences; Motor vehicles; Street trading

Summary: A person who travelled by car with goods to a town or city to offer those goods for sale was not acting as a pedlar under the Pedlars Act 1871 s.3 since the Act defined a pedlar as a person who both travelled and traded on foot.

Abstract: The appellant (J) appealed by way of case stated against his conviction for engaging in street trading contrary to the Local Government (Miscellaneous Provisions) Act 1982 Sch.4 para.10(1)(b). J had arrived in the respondent local authority area having driven there by car with a quantity of umbrellas for sale. A magistrates' court found that he had sold umbrellas from a place on which he stood on two successive days, and that he had stood in the same place for a period of 55 minutes on the first day and then for a period of 17 minutes on the second day. J, who held a valid pedlar's certificate, maintained that he had been acting as a pedlar under the Pedlars Act 1871 s.3; therefore the statutory exception under Sch.4 para.1(2) of the 1982 Act applied. The magistrates' court rejected the assertion that J was acting as a pedlar and convicted him. The question for the High Court was whether the magistrates' court had been correct to decide that J was not acting as a pedlar.

Appeal dismissed. It was correctly agreed by the parties that the burden of establishing the statutory exception that a person was acting as a pedlar lay on the defendant, *R. v Hunt (Richard Selwyn)* [1987] A.C. 352 and *South Tyneside MBC v Jackson* [1998] E.H.L.R. 249 applied, and *Shepway DC v Vincent* [1994] C.O.D. 451 considered. A person claiming to trade as a pedlar would be in a better position than a prosecutor to produce their pedlar's certificate, and to describe the nature of the trade that they were undertaking and the manner in which they were undertaking it. The definition of "pedlar" in s.3 of the 1871 Act required a pedlar to have travelled on foot. In the 19th century, a tradesman who arrived in a town on a horse and cart carrying a significant quantity of goods for sale would not have come within the statutory definition as he had travelled on horse. In modern times, a horse had been replaced with a motor vehicle. As a matter of construction, the statute was to be read so that the reference to "horse" in the 1871 Act was replaced by "motor van" or "car". Therefore, a person who drove with his goods in his car to a town or city to offer them for sale was not acting as a pedlar, as he had not travelled on foot. The requirement that a pedlar conduct his activities on foot applied to both travel and trade. In the instant case, J had arrived with his car full of umbrellas for sale. That fact alone put him outside the definition of a pedlar. Even if that construction of the definition of pedlar was erroneous, the magistrates' court was entitled to find that J was not acting as a pedlar on the proven facts.

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:

N/A

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

N/A

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

- I am sure that the Pedlars will object because it will make it more difficult for them but it is about time the rules were clarified.
- We will still have no rights to demand their name and address, DOB
- No rights of seizure of their goods
- What about the ability to issue an FPN
- We would still like to have some modicum of control over what will still be to all intent and purpose a Street Trader – would we have the ability to issue a consent to them and be able to levy a charge
- Would the Police still have an enforcement role or will this be purely down to Local Authorities - I take it that enforcement would be from the Street Trading Legislation

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:

It gives a clearly defined condition on what they can do – having said that I am sure that someone will come up with a challenge. For instance there is no mention of several persons acting in consort and all having a receptacle to pull or push along.

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:

Having said that it would mean going back to our Full Council to discuss any changes – it may be better to designate a certain area for temporary 1 day Street Trading. As it stands all our Street in B&NES require consent for Street Trading.

Question 4:

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

☒ Yes

☐ No

Comments:

In Bath and North East Somerset we take the photograph using a webcam. At least with this system you get to meet the person face to face which gives less possibility of fraudulent applications. Also with digital photography readily available why would you need a traditional 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:

I am not sure that to give a Street Trading License / Consent to a person under 17 is correct. The C&YP Act 1933 mainly refers to the employment and not acting as the Licence / Consent Holder. I can see that the age could be reduced to 16yrs old because of the school regulations and not 17 but it would need to be specified within the Act. Also as a World Heritage City with a huge tourist trade to water down our grounds for refusal would be to our disadvantage.

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:

I am not in a position to give a number because this question has not arisen due to the current age limit specified at 17

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:

No need to comment

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:

Not given the argument that you have. I do believe though that it could affect traders who have enough difficulty to make ends meet as it stands at present. We are a World Heritage City with a small city Centre and attract a huge amount of tourists – we try and offer a broad spread of Pitches (that complement the commercial businesses as well) and not concentrate them all together – what you are proposing would destroy that completely. I would like to see it remain but as you say we can't use this reason. I am sure that this would mean more applications ending up being objected to and going to a Licensing Sub Committee for a determination.

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:

I agree that a new ground of Unsuitable should be inserted – this would be particularly useful where the residents or other person could be affected by a particular form of trader. Suitability would need to be defined a lot better though or else we will defeat the whole object of it and end up in lots of challenges.

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:

- (i) – in relation to this I believe that its use would be restricted to specific circumstances on an individual basis
 - (ii) - potential to increase costs by challenges, legal costs, Councillor time and officer time

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:

No need to explain

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:

Could be used by an existing trader or business to stop other traders trading in conflict with them and not Street Trade at all.

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:

See above

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:

Challenges by existing traders if you change the designation of the street and they lose out.

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:

Because of the of myriad of different legislation currently in existence it would be very difficult to discriminate against any particular person or group of individual and would be easily challenged.

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:

But I would still like to see the flexibility to issue a Licence / Consent for any period we consider is right for our location

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:

Positive and Neutral Impact – we have a number of well-established traders and a number of Pitches which for whatever reasons have a turnover of traders.

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:

That would have to be discussed and decided on but surely this is in conflict with what you are proposing to opening up trade. It creates a situation where we could offer long term Consents so that new applications could not be considered against a specific Pitch.

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:

No need to comment

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:

But could lead to a Judicial Review

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:

I believe that it would be more transparent if the conditions were added and not lead to a challenge

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:

No need for an explanation

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

☐ Yes

☒ No

Comments:

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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:

N/A in Bath and North East Somerset

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 in Bath and North East Somerset

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 in Bath and North east Somerset

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 in Bath and North east Somerset

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:

Although you have a difficult job in managing this I don't think it is as simple as what is being done here – this will cause us a lot of problems. Is it the intention to get rid of CONSENT STREETS – the main thrust of this is aimed at a Licence and not Consent which is what we have.

There is no mention of charges within this process – what is the intention or will that remain the same.

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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