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Response Started: Friday, March 8, 2013 2:20:19 PM

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1. a) Your Name

Angie McGinn

2. b) What organisation do you represent (if any)?

Cornwall Council

3. c) E-mail address:

4. d) Please tick the box below that best describes you as a respondent to this consultation

Local government

1. Question 1: Do you agree with the proposed repeal of the Pedlars Acts 1871 and 1881 UK- wide? (Consultation document page 15)

No

Cornwall Council does not agree that the licensing of pedlars be repealed and also feels that pedlars selling foodstuffs should not continue to be exempt from needing authorisation when peddling in a street that has been designated by the local authority. All street traders should be brought within the licensing regime and be required to obtain consent to trade in designated areas. Likewise, streets where street trading has been prohibited should also include pedlars. In the previous consultation Cornwall Council commented as follows:- "Local authorities who have adopted byelaws or have Local Acts have done so because they have specific problems or locations that are not appropriate for Pedlars (or Street Traders) to operate in for a variety of reasons. There are others who may currently have been looking to adopt such legislation in order to deal with growing issues. Cornwall Council is one of those latter authorities and we would therefore welcome legislation to deal with such matters. Separate legislation may not be necessary. We are a highly rural, but coastal location with a considerable tourist trade during the summer months. This is the period where the greatest number of issues with pedlars is experienced. This is in terms of obstruction of traffic or pedestrians, due to environment and number of pedlars; this is because many of our most popular village locations have very narrow roads and pavements, and also have additional structures such as harbours, which have their own constraints due to their very nature. Clearly by removing local authorities ability to make local byelaws or the creation of local Acts to assist in alleviating these problems such issues will remain and are likely to increase as pedlars will know that we have no authority to control them. Therefore this has to be addressed via amendment to the existing street trading legislation or the introduction of a separate regime, which does meet the requirements of the SD, but also allows fair and reasonable control of pedlars when and where absolutely necessary."

2. 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? (Consultation document page 15)

No Response

3. 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 any other factors? (Consultation document page 15)

No Response

4. 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. (Consultation document page 15)

Organisation

Individual

Group

The repeal will mean greater competition for local businesses where pedlars travel to our Towns and sell their products. It may be that holders of consents to trade issued by the Council, and which traders have paid for, will resent the relaxation as there may be an increase in persons acting as pedlars to avoid having to pay for a consent to trade. It is expected that officers in our enforcement team will have an increased amount of work in dealing with complaints against alleged unlicensed street trading.

1. 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? Please fully explain your reasons for agreeing or disagreeing with any element of the proposed definition. (Consultation document page 18)

Yes

The definition not only includes what we suggested in our previous consultation, but also includes dimensions and time limits.

2. 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? (Consultation document Page 18)

No

Requiring a person to obtain a consent to trade is not relative to whether the trader is established or temporary. If we did do this then does that not then create an inequality in favour of temporary traders over established traders (i.e. oversee indirect discrimination).

3. Question 4: Do you agree that only one photo needs to be submitted with street trading applications which are made electronically? (Consultation document page 19)

Yes

We responded on this issue in the last consultation and agreed that one photo is sufficient for an electronic application.

4. Question 5: Do you agree with this proposal to replace this 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. (Consultation document page 20)

Yes

5. Question 5.1: If you are a local authority, can you indicate the approximate number of those applications you would expect to be made from those under 17 years of age? Consultation document page 20)

Less than 10. This is difficult to estimate. Reducing the age limit could cause more applications. We have only ever received a handful of requests for children over a number of years. They tend to be in relation to projects at school for the older children where they may wish to sell goods they have made.

6. 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? (Consultation document page 20)

Yes

7. 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? (Consultation document page 21)

No

It would appear, as stated, that this refusal ground does fall foul of the Directive as it does protect existing traders.

8. Question 7.1: Do you consider that it is necessary to insert a new replacement "suitability" refusal ground into paragraph 3(6)? (Consultation document page 21)

Yes

9. 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? (Consultation document page 21)

(i) An example could be for moral / ethical reasons in terms of perhaps products that would not be suitable for sale near say a school or religious establishment? (ii) as a Council there would be no difference in any cost for refusing on this ground compared to any other ground.

10. Question 7.3: Would it be helpful for BIS to issue guidance on the circumstances in which this replacement ground could be used? (Consultation document page 22)

Yes

11. 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? (Consultation document page 22)

No

12. 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? (Consultation document page 22)

Expressly preventing the grounds from being used in relation to temporary traders

Cornwall Council tends to designate "prohibited" streets and "consent" streets and makes little use of "licence" streets. Cornwall Council agrees that these two grounds should be prevented from being used for temporary traders, given that the grounds do not appear to be compatible, and would think it preferable to retain them for established traders, particularly if the trader is not making sufficient use of the licence.

13. Question 8.2: Will local authorities continue to use these grounds in relation to established traders? (Consultation document page 23)

Yes

If Cornwall Council did make more use of designating "licence" streets then it perhaps would make more use of ground 3(6)(g). It would be unlikely to have a resolution setting minimum number of trading days and as such is unlikely to make use of refusal ground 3(6)(c).

14. Question 8.3: Do you foresee any difficulties with our proposals to limit the circumstances in which these grounds can be used in relation to established traders? (Consultation document page 23)

No

15. Question 9: Do you foresee any problem resulting from the proposed repeal of paragraph 3(8) of Schedule 4 to the LG (MP)A? (Consultation document page 23)

Yes

Is it not possible for a trader from another Member State to obtain an annual licence to trade? That being the case they will not benefit from an automatic renewal either. It is noted that repealing this section would mean that an established trader, whether a UK national or from other Member states, will lose their established right to continue to trade in such circumstances.

16. 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? (Consultation document page 23)

No

No. Please see answer to Question 9.

17. 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? (Consultation document page 24)

No

If it is flexible then the Local Authority can determine locally the length of time the licence should be issued for.

18. Question 10.1: If you are a local authority can you further tell us: 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? (Consultation document page 24)

Neutral

Cornwall Council tends to use "consents" rather than "licences" If this were in response to consents then this would still be neutral as we have a policy which allows us to continue to renew established traders provided there is no issues with the way they operate / their conduct.

19. Question 10.2: If you are a local authority can you further tell us: (i) Whether you are likely to issue licences for more than a 12 month period or indefinitely? (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? (Consultation document page 24)

Unlikely to both. If we used "licences" then we would probably stick with the maximum 12 months. The same would be the case for consents as we only like to renew if there are no problems. Allowing a number of years at a time means we would have to consider revocation. Applying annually also gives the opportunity for a trader to request changes / variation to their trading.

20. 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? (Consultation document page 25)

Yes

21. 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? (Consultation document page 25)

No

22. Question 11.2: 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? Will local authorities continue to use that ground in relation to established traders? (Consultation document page 25)

Yes. Response as detailed in response to questions 8.1 and 8.2.

23. 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? (Consultation document page 25)

No

24. Question 12: Do you foresee any problems with our proposals - (i) To disapply regulation 19(5) of the PSR where a mandatory ground for refusal of the application exists; or (ii) To leave it to local authorities to decide whether to put arrangements in place to disapply regulation 19(5) 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. (Consultation document page 26)

No. The proposal would stop deemed consent if a mandatory ground applied. Local Councils could allow deemed approval or put an arrangement in place to prevent this and in such circumstances could publish standard conditions of licence. The law does allow local councils to advise an applicant that their application will not be considered by the published date as long as this is only done once and a date of determination is provided. This should be adequate.

25. 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? (Consultation document page 27)

No

26. Question 14: Do you foresee any problems with our proposals to amend paragraph 10(1)(d)? (Consultation document page 27)

No

1. Question 15: Please can local authorities tell us about any other local Acts regulating street trading which are not listed at Annex B of the consultation document (or any other Acts listed in Annex B which have in fact been repealed). (Consultation document page 29)

Cornwall County Council Act 1984

2. Question 15.1: Please can local authorities tell us- (a) Whether, having screened your local street trading Acts for compliance with the Directive, amendments /repeals need to be made to that legislation; (b) If such amendments/repeals are needed whether you wish us to include them in our regulations. (Consultation document page 29)

15 (i) No 15 (ii) Legislation makes it possible for the Council to consider regulating touting and importuning which is also caught by the Local Government Act 1972.

3. 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. (Consultation document page 31)

N/A

4. Question 17: Please can local authorities tell us- (i) What consequential amendments are required to the provisions of local acts listed 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)? (Consultation document page 32)

N/A

5. 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.

No Response
