

Department for Business Innovation & Skills

Street Trading And Pedlary Laws – Compliance With European Services Directive

Question 1

Do you agree with the proposed repeal of the Pedlars Acts 1871 and 1881?

Answer

Please see the detailed response contained in the NABMA letter and the supplementary submissions made in support of NABMA's case.

Question 2

Do you agree with our proposed new definition of a pedlar for the purposes of the pedlary 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.

Answer

NABMA welcomes in principle a revised definition but does not agree that a pedlar should be allowed to use a receptacle. Please see the comments on this matter in the NABMA letter and enclosed submission on behalf of Counsel instructed by NABMA. Furthermore, NABMA is concerned about the proposals regarding the length of time that the trader is able to trade and the ability to return to a particular location. NABMA believes that the current proposals are almost impossible to operate successfully. NABMA also believes that if a time limit is to be imposed on a return to a location, then it should be substantially extended. NABMA firmly believes that the exemption should be removed and pedlars should be required to apply for a temporary street trading licence.

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 licensed/consent street in relation to established traders but not in relation to temporary traders?

Answer

NABMA is unable to comment on this issue.

Question 4

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

Answer

Yes.

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 seventeen needs to be retained.

Answer

NABMA has no objection to the BIS proposal.

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 seventeen years of age?

Answer

NABMA has no information to offer on this particular question.

Question 6

Would it 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?

Answer

NABMA supports the issue of guidance.

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?

Answer

NABMA is very concerned about the implications of implementing the BIS proposals. One of the essential ingredients of markets/street trading is to ensure that there is a good balanced offer. The problem that can arise from implementing the BIS proposals is that over a period of time the balance of the trading may be distorted and instead of an attractive market/street trading activity offering customers a wide variety of goods, the goods on offer might be limited and therefore lead to a decline in the appeal of the market/street trading. NABMA takes the view that it would be possible to use the justification of public policy in support of the current legislation. In the context of the Government's efforts to revitalise town centres, it seems that implementing this proposal would be a retrograde step and BIS should seek to retain the current arrangements to assist in the Government's stated objective of town centre revitalisation.

Question 7.1

Do you consider that it is necessary to insert a new replacement "suitability" refusal ground into paragraph 3(6)?

Answer

As already indicated, NABMA takes the view that it is important to maintain the current legislative framework. NABMA believes that the proposal offers little assistance to achieve the objective of a balanced market/street trading offer.

Question 7.2

In relation to this new ground can you tell us:

- i) In what circumstance you would use this ground and how often?
- ii) Whether this ground would produce costs on you as a local authority, or on user business and what these costs are likely to be?

Answer

NABMA does not support this proposal and therefore does not wish to comment on the questions raised.

Question 7.3

Would it be helpful for BIS to issue guidance on the circumstances in which this replacement ground could be used?

Answer

Please see the answer to **Question 7.2**.

Question 8

Do you think there are any circumstances in which either of these grounds could be used compatibly with a Directive in relation to temporary traders?

Answer

NABMA can understand why street trading authorities would want to maintain these requirements in respect of established street traders. However, with regard to temporary traders, particularly in the context of embracing NABMA's proposal that pedlars should be included within the street trading regime, NABMA does not feel that these particular provisions are of great importance and would have no objection to the BIS proposal.

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?

Answer

As indicated, NABMA believes that the BIS proposal should be limited to temporary traders.

Question 8.2

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

Answer

NABMA believes that local authorities should be allowed to rely on these provisions with regard to established traders.

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?

Answer

No.

Question 9

Do you foresee any problem resulting from the proposed repeal of paragraph 3(8) of Schedule 4 to the LG(MP)A?

Answer

NABMA has no objection to what is being proposed.

Question 9.1

Do you agree with our assumption that those who may benefit from this revision are more likely to be UK Nationals than Nationals of other member states?

Answer

As indicated, NABMA has no objection to the proposed repeal.

Question 10

Do you foresee any problems with our proposal to give local authorities flexibility to grant licences for longer than twelve months or indefinitely?

Answer

NABMA has no objection to this proposal.

Question 10.1

Will lengthening the duration of licences would have a positive, negative or neutral impact on the ability of new street traders to obtain licences to train in your licenced street?

Answer

NABMA believes that there is no reason why a balance cannot be struck between assisting established traders to invest in their businesses and also provide opportunities for new traders to begin their careers with shorter licences. Local authorities should have the flexibility to determine what is appropriate given the particular need.

Question 10.2

- i) Whether you are likely to issue licences for more than a twelve month period or indefinitely?
- ii) If you are likely to issue licences for a defined period which is longer than twelve months, what period are you likely to choose?

Answer

NABMA is unable to comment on these issues.

Question 11

Would it be helpful for BIS to issue guidance on how the PSR may affect local authorities' ability to use some or all of the revocation grounds contained in paragraph 5(1)(a)-(c) in relation to established traders/temporary traders?

Answer

NABMA believes that guidance would be greatly appreciated.

Question 11.1

Do you think there are any circumstances in which paragraph 5(1)(d) ground could be used compatibly with the Directive in relation to temporary traders?

Answer

NABMA believes that there is merit in considering the previous behaviour of established traders particularly in respect of ensuring that street trading activity remains vibrant. It is in the interests of public policy to maintain this objective. However, in respect of temporary traders, the same requirements do not apply.

Question 11.2

Do you think it would be preferable to pursue our proposed approach of expressed at 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 establish traders?

Answer

Please see the previous answer given in respect of **Question 8**.

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?

Answer

No.

Question 12

Do you foresee any problems with our proposals:

- i) To disapply Regulation 19(5) of the PSR for 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)?

Answer

NABMA does not foresee any problems with the BIS proposals.

Question 13

Do you foresee any problems with our proposals to allow local authorities to relax a prohibition in Paragraph 7(7) in its entirety where appropriate?

Answer

NABMA does not foresee any problems with the BIS proposals.

Question 14

Do you foresee any problems with our proposals to amend Paragraph 10(1)(d)?

Answer

NABMA does not foresee any problems with the BIS proposals.