

Consultation Questions: England and Wales

Repeal of the Pedlars Acts:

Question 1: Do you agree with the proposed repeal of the Pedlars Acts 1871 and 1881 UK-wide?

No. The existing Pedlars Acts may not meet the requirements of the ESD but it is useful to have a certificate available so that pedlars can be identified, firstly for the consumer but also for the Local Authority if a prosecution is being considered whether for street trading or Trading Standards purposes; i.e. there is a requirement in the Pedlars Acts for the pedlar to produce their certificate. The complete repeal of the Pedlars Acts will effectively give licence for anybody to trade on the street, or house-to-house, with complete anonymity.

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.

Not aware of anyone.

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. Street Trading and Pedlary Laws – Compliance with the European Services Directive 33

Under paragraph 1.16 (clause (2B)(b)(ii)) the maximum dimensions of the receptacle are larger than we would like.

Paragraphs 1.20 to 1.23 define the general limitations on times and distances for pedlar activity. Our experience is that illegal street traders will comply with the existing regulations when they are being monitored. They are less scrupulous when they believe they are not being monitored. Unfortunately the proposals will make it more difficult to monitor activities as follows:

The drafted clause (2C) makes reference to a location occupied by a trader ‘with a view to trading’. The trader may occupy this location for up to 10 minutes. However, this is then undermined by clause 2(E) which allows a trader either to remain static or to trade in another location. Is this a location where a trader ‘does not have a view to trading’ or would it be a second location ‘with a view to trading’? It is not beyond anyone’s imagination to see how this clause may be manipulated, we have seen such things enacted under the existing legislation with faux customers being employed to extend the amount of time an existing pedlar can remain stationary.

At the conclusion of 10 minutes paragraph 1.21 of the consultation states that a trader should then move on (at a reasonable speed) to a location at least 50 metres away. The proposed clauses in Appendix A do not make any reference to the speed at which a trader should travel, let alone what

may be considered a reasonable speed, so this part of your paragraph holds no weight. However, the 50 metre distance is also undermined by clause 2(E) which allows a trader to stop if approached by one or more customers and provided that he leaves the location as soon as he has no more customers. How far should the trader now travel? 50 metres from the original location or the secondary location? Paragraph 1.23 is not explicit on this point and the proposed clauses are even less explicit.

We believe that the 50 metre movement requirement is too short and this has been considered previously in relation to the Bournemouth and Manchester Acts. Parliament decided that 200 metres was a more appropriate distance of travel and we would agree with this.

It is understood that the proposals attempt to clarify the definition of a pedlar but it does not really improve on existing case law. The clauses in Appendix A are open to interpretation and therefore may be implemented in different ways in different authorities. The lack of clarity would make it difficult for a 'genuine' pedlar to comply with the proposals and almost impossible for an enforcing authority to monitor, particularly when 5 or 6 pedlars may be operating in a Town or City on the same day.

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? (paragraphs 1.25 – 1.27)

Nottingham designates its streets either as consent or prohibited streets. Streets are designated for reasons of public security or the protection of the environment, which applies to both established and temporary traders.

The regulations are silent on the definition of a prohibited street, does this mean that BIS are satisfied that the designation of a street as prohibited applies equally to established traders and temporary traders.

Question 4: Do you agree that only one photo needs to be submitted with street trading applications which are made electronically? (see paragraph 1.28 above)

Yes.

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. (Paragraph 1.32).

The proposal is agreed in principle.

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?

We would not anticipate a huge increase in applications from 16 and 17 year olds.

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).

Nottingham City Council do not issue street trading licences so this is not relevant to us at the moment, however, it would probably be useful for BIS to issue guidance for those authorities that do.

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).

Paragraph 3(6)(b) only applies to licence streets and the City Council only designate streets as either consent or prohibited streets. The Council have a policy of only allowing certain goods to be sold from consented pitches in the City Centre; namely Ice Cream, Flowers, unprepared Fruit and Vegetables, Hot potatoes and seasonal goods. The purpose of the policy is to ensure that street trading enhances the public realm rather than duplicating the existing retail offer in the City.

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)

See 7.2.

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?

Nottingham City Council wouldn't use this ground as it relates to licence agreements rather than consents.

Question 7.3: Would it be helpful for BIS to issue guidance on the circumstances in which this replacement ground could be used?

Guidance is always useful if it is clear and concise.

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)

These paragraphs were included in the original legislation to prevent street traders from holding monopolies on street trading licences or 'shutting out' competitors. That is to ensure that all pitches were fully occupied and not just traded on the peak days (perhaps Saturdays or market days). However the repeal of these grounds would open up the possibility of someone obtaining a licence but only operating on certain days and thereby denying new street traders the opportunity to trade. The repeal of

paragraph 3(6)(c) may act against the interests of temporary traders if established traders hold pitches that they do not utilise fully.

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?

The Council would not want to operate two levels of street trading. It is likely that the Council would frame its policy around the least stringent grounds i.e. based on ESD in relation to temporary traders.

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

Not applicable.

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?

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? (see paragraph 1.43)

This is mainly a transitional arrangement from local Acts to the LG(MP)A. The repeal of this would have an effect on a one time only basis.

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, but once the LG(MP)A has been adopted there will be no affect.

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)

The prospect of indefinite licences seems to restrict the opportunities for new applicants and seems to act against the principles of the ESD.

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?

Assuming that there is only a limited number of street trading pitches available the lengthening of licence would have a negative impact on new street traders applicants.

Question 10.2:

(i) Whether you are likely to issue licences for more than a 12 month period of 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?

We would probably retain a 12 month agreement period.

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.

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?

If an established trader fails to use their licence and the licensing authority were not able to revoke the licence this could limit the opportunities for temporary traders to trade.

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?

It would be preferable to retain the revocation grounds when related to established traders.

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?

As above.

Question 12: Do you foresee any problems with our proposals - Street Trading and Pedlary Laws – Compliance with the European Services Directive 35

- (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 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)

Nottingham City Council do not see any problem with the disapplication of regulation 19(5) of the PSR.

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)

No.

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

No.

Questions 15 to 17 are responded to in a separate document prepared by Sharpe Pritchard on behalf of Nottingham City Council and others.