



Licensing Service,
Sheffield City Council,
Block C Staniforth Road Depot
Staniforth Road,
Sheffield, S9 3HD.
Tel:0114 2037752 Fax:0114 2734073
E-mail: general.licensing@sheffield.gov.uk
Website: www.sheffield.gov.uk
Date: Tuesday 12, February 2013

Rachel Onikosi
Policy Manager
Department of Business, Innovation and Skills
Consumer and Competition Policy Directorate
1 Victoria Street
London
SW1H 0ET

Via email: stcompliance@bis.gsi.gov.uk

Dear Sir/Madam

STREET TRADING AND PEDLARY LAWS - COMPLIANCE WITH THE EUROPEAN SERVICES DIRECTIVE

A joint consultation on draft regulations - Repeal of the Pedlars Acts (UK- wide), and changes to street trading legislation in England and Wales and Northern Ireland – November 2012

I refer to the above and I thank you for the opportunity to respond to your consultation document published November 2012.

Consultation Response

Sheffield City Council only issue 'consents', therefore questions 6, 7, 8, 9 and 11 relating to licences have not been answered.

For ease of reference I have addressed the remaining questions in number order below with our response followed by each question:

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

Yes, we agree with the proposed repeal of the Pedlars Acts 1871 and 1881 UK wide as the legislation is now outdated and it is increasingly difficult to enforce Pedlars.

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.

We do not agree with the proposed new definition of a pedlar for the purposes of the pedlar exemption from the 'national' street trading regime.

We feel that a Pedlar should not remain an exemption under schedule 4 of the LG(MP)A.

Should it remain an exemption, there should be an authorisation scheme which would clearly be justified by an overriding reason to the public interest (Art 9). There are significant public safety and security issues as well as public health and protection of consumers. We feel it is extremely important that any person who is permitted to trade should go through an authorisation scheme, to ensure they are fit and proper. This could include a police check or equivalent vetting. Traders come into contact with children and other vulnerable people who we need to afford extra protection. Local Authorities would not know whether Pedlars have a right to work, if they are claiming benefits or if they are illegal immigrants. Failure to implement an authorisation scheme would cost Local Authorities and other agencies time and money on enforcement.

The proposed definition also allows pedlars to trade in pedestrian areas. We feel that this should be omitted from the definition as other authorisation schemes are in place should they wish to do this. Most pedestrian areas likely to be used by pedlars are city/town centres which are managed by council departments taking into account local economy needs accordingly. Pedlars under this definition would overcrowd, cause obstruction and limit how the area is used. We feel that a pedlar should be trading on foot by means of visits from house to house and town to town as was originally intended.

Paragraph 2A of the draft regulations state that pedlars would be trading on foot, would this be from their place of residence? Do the pedlars have any resting time? The regulations need to be clear and concise so pedlars and local authorities are aware of what is permitted.

Local Authorities continually receive complaints regarding pedlars and their receptacles from businesses and the general public. The definition should therefore reduce the size of the 'receptacle' permitted by a pedlar. The dimensions listed in the proposed draft regulations are too generous and would cause problems on any street/road with regards to obstruction, public safety and protection of the environment.

The exemption does not include any measure about how many are permitted in an area, or how far away they should be from other pedlars. There is also no restriction on the type of goods which would be a concern. We would have issues with a pedlar selling living things as we would need to ensure that the animals are kept adequately and safe (health of animals) which again is an overriding reason of public interest.

The exemption does not state anything about selling food. Any pedlar under this exemption selling foodstuff hot or cold causes danger (hot plates, gas bottles, food hygiene, etc) and nuisance (odour etc) which will require extensive enforcement activity to control.

Sub paragraph 2D gives a restriction of 3 hours, who would monitor and enforce this. Current issues regarding Pedlars are hitting Local Authorities with substantial time and costs enforcing Pedlars that are illegally street trading.

The definition does not state the minimum age a Pedlar can be. Whilst there is adequate provision for safeguarding children of compulsory school age in other primary legislation, existing legislation (CYP Act 1933, 1963 and local Byelaws) does not make adequate provision for safeguarding children of non compulsory school age (sometimes aged 15 years) working in the context of pedlary.

This would impact on the safety and welfare of young pedlars and on the statutory services for the following reasons:

- (i) Children of non compulsory school age (as young as 15 years) working as pedlars would not be required to obtain consent to trade from the police. This would result in a

lack of supervisory, regulatory and protective arrangements for young people aged 15 or over. Pedlary involves working in transient, unpredictable environments, approaching strangers or being approached, for trade. Routinely a young person may carry about their person valuable goods or cash. The peddling environment is difficult to risk assess.

One impact of the proposal therefore would be that children aged 15 years or over may be at risk of harm, affecting their safety and welfare.

(ii) The activity of children peddling in an unregulated context may impact on the resources of the local statutory services, such as police, children's services and licensing authorities, which would need to make arrangements to monitor peddling activity to safeguard the children involved. (Such arrangements may include the administration and enforcement of a permit scheme; a requirement for a risk assessment to be undertaken and the provision of a registered adult who is appropriately vetted with designated responsibility for the supervision of the young pedlar; identity cards for young traders and supervisors.)

The draft definition and the requirements under it are not clear and are open to abuse, courts could interpret the regulations differently making it difficult for authorities to control and enforce.

Sheffield City Council openly welcome legitimate traders, we regularly have continental markets however they are regulated as we need control of what is happening in the city centre.

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)*

To ensure consistency we as a local authority would designate a street as a licence/consent street in relation to both established and temporary traders, we would not find any circumstance where we would not.

Designating streets as a licence/consent street will ensure that we as a Local Authority are ensuring certain issues which are in the public interest is taken into account and therefore an authorisation scheme would be required taking into account Art 16.

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, we agree and fully support that only one photograph is needed when applications are submitted electronically.

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).*

Whilst there is adequate provision for safeguarding children of compulsory school age in other primary legislation, the Sheffield Safeguarding Children Board does not agree that the mandatory age requirement for street traders (to be aged 17 years or over) should be removed, because existing legislation (CYP Act 1933, 1963 and local Byelaws) does not make adequate provision for safeguarding children of non compulsory school age (sometimes aged 15 years) working in the context of street trading.

Street trading involves working in a public environment that is not controlled, including working outdoors selling goods at high capacity events such as football, music/entertainment where alcohol may be on sale and where the customer base is transient and unpredictable; it involves the exchange of goods for cash. The street trader environment is difficult to risk assess. This means that young street traders aged 15 years or over may be at risk of harm, affecting their safety and welfare.

For the above reasons, the minimum age should be retained.

If the mandatory minimum age requirement is removed, there would be an impact on the resources of the statutory agencies because additional safeguarding arrangements would need to be in place for children of non compulsory school age who are registered with the local authority as street traders but who would not be adequately protected under existing legislation. (Such arrangements would run alongside the existing registration/consent requirement and may include the administration and enforcement of a designated supervisor scheme; a requirement for a risk assessment to be undertaken; identity cards for young traders and supervisors.)

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 currently have had very little interest. There may be however possible applications from 16 years who are doing projects after leaving school.

We would foresee that we would get more (assistants) helping parents who are consent holders than applying individually for a consent/licence.

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)*

We do not see any problems with the proposal to give Local Authorities flexibility to grant licences/consent for longer than 12 months or indefinitely as long as the flexibility is a choice to grant up to a certain period and not for a minimum duration.

Although we are not against this proposal, primary legislation will need to be altered to deal with the impact of an indefinite consent, for example what happens if the consent holder dies, or other such circumstances?

As an Authority, we will need to review and re-assess consents annually to ensure that reasons relating to public interest such as public safety, public policy, security etc are considered within appropriate times (ORRPI).

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?*

We would suggest that this would give a negative effect. Issuing long term or indefinite consents could affect the local economy and the closure of businesses. Local economic factors should be taken into account when issuing consents as areas change and the suitability of issuing such consents.

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?

(i) Sheffield City Council would keep to issuing consents for a maximum of twelve months. This would give the Local Authority an opportunity to assess/review the application and the trader and what is happening within the locality of the consent area. This process would ensure all the overriding issues of public interest such as public safety, policy, security and health are considered on an annual basis.

(ii) Sheffield City Council would keep to a maximum of twelve months for a consent.

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 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)

(i) We would foresee some problems as there may be other overriding reasons in the public interest that we may need to refuse an application other than mandatory grounds. We would need to ensure that the applicant is suitable as they could be in contact with children and vulnerable persons, there may be traffic regulation orders that make it unsafe for any trader to be located there.

(ii) As a Local Authority, we would prefer that we can put arrangements in place to disapply the regulation in other circumstances. We would then be able to take into account issues of public interest and present the case to a Licensing Committee for determination if required.

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)*

We foresee no issues or problems with the proposals to allow a relaxation in paragraph 7(7) in its entirety where appropriate. Applicants would be treated fairly and give them more scope and variety of the type of business they wish to promote.

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

We foresee no problems with your proposals to amend paragraph 10(1)(d).

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).*

There are no further local Acts to disclose other than the South Yorkshire Act 1980 – sections 67-78 which are already listed at Annex B of your document.

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.

(i) Yes - South Yorkshire Act 1980 – sections 67-78

(ii) Yes, we would require the repeal in the regulations.

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.

(i) Section 78 of the South Yorkshire Act 1980 require consequential amendments as a result of the Pedlars Act (drafted provisions and explanation attached).

(ii) None.

(iii) South Yorkshire Act 1980 is still in force.

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)?

(i) Sections 67-77 of the South Yorkshire Act 1980 will require consequential amendments as a result of proposed amendments to Schedule 4 of the LG(MP)A (drafted provisions and explanation attached).

(ii) None.

There are four authorities making up South Yorkshire, namely; Sheffield, Doncaster, Rotherham and Barnsley and the South Yorkshire Act 1980 applies to each. All four authorities agree that sections 67-78 should be repealed.

Yours faithfully



Mr Stephen Lonnia
Chief Licensing Officer
Head of Licensing

Enquiries to: **Licensing Service on 0114 2037752**

Sheffield City Council

Proposed provision to be inserted in the draft Street Trading and Pedlary Regulations 2013 to repeal the street trading provisions in the South Yorkshire Act 1980

After paragraph 3 of Part 1 of the Schedule insert –

“South Yorkshire Act 1980

3A. In the South Yorkshire Act 1980¹ omit sections 67 to 78 (street trading).”

Note: It is assumed that the repeal would be included in the Schedule to the proposed Regulations. If there is a doubt whether the repeal is, strictly speaking, consequential on the amendment of Schedule 4 to the 1982 Act, regulation 20 could be revised to read –

“Amendments, repeal and revocation

20. The Schedule (which amends, repeals or revokes legislation which is similar to Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 and makes amendments, repeals or revokes other legislation in consequence of the repeals and amendments made by Parts 2 and 3 of these Regulations) shall have effect.”

The heading of Part 5 and the Schedule could be revised similarly.

¹ 1980c. xxxvii.

Sheffield City Council

Reasons for the proposed repeal of Sections 67 to 78 of the South Yorkshire Act 1980

Outline of Part VIII of the South Yorkshire Act 1980 (c. xxxvii)

1. Part VIII (sections 67 to 78 of the South Yorkshire Act 1980 (“the 1980 Act street trading regime”)) provides a regime to enable a district council in South Yorkshire to prohibit and control street trading. The provisions enable a district council in South Yorkshire to designate streets as a prohibited street (where street trading is unlawful) or a licensed traders’ street (where street trading is permitted by individuals who hold a street traders licence).
2. The regime contains the following additional provisions –
 - Section 68 sets out a process for advertising notice of their intention to designate streets as prohibited or licensed together with a process for comments to be made by the Highway Authority, the Chief Officer of Police or indeed, other individuals. Before passing a resolution, the district council must take into consideration any objections received.
 - Section 69 sets out the process for individuals to apply for a street traders licence and details the information which must be provided in support of an application. It also sets out the process for a district council to refuse an individual’s application on the basis that: - they are not suitable; there is not enough space for street trading; or in the case of a renewal application, the individual has not made use of the rights given by his licence. The Act also sets out time limits for giving of notices before decisions are taken and a process for notification to the applicant of the decision.
 - Section 70 sets out the information which must be contained in an individual’s street trading licence.
 - Section 71 provides that a street trader licence shall be for a period not exceeding 12 months and also gives the district council power to revoke a licence or impose modifications on a licence.
 - Section 72 sets out a process for appealing to the Magistrates Court where an individual has been refused the licence or where a licence has been revoked. There is provision for licences to be given to only those who are over 17 and also provisions to protect the employment of children.
 - Section 75 provides for consultation with traders organisations and section 76 enables the district council to charge for street cleansing and refuse collection.

- Section 77 sets out an offence liable on summary conviction up to £200 where an individual engaged in street trading in either a prohibited street or without a licence.
- Section 70 provides an exemption in the instance of pedlars who have a Pedlars Certificate under the Pedlars Act 1871. There are also additional specific exceptions including street collections, the provision of facilities for recreation or refreshment. In general, these are where matters are regulated under other legislation.

Overlap with Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982

3. The 1980 Act street trading regime is very similar to that provided in Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 ("the 1982 Act"). This is not surprising since the purpose of Schedule 4 was to provide a street trading regime which could be adopted by local authorities so as to save them having to promote private legislation for that purpose as several local authorities had done prior to 1982. Its provisions were taken from various existing private Acts which were in fairly standard form subject to some local variations. The 1980 Act is one example of such private legislation.
4. As explained above, the 1980 Act street trading regime is triggered by a district council in South Yorkshire designating a street as a prohibited licensed traders' street. Instead of relying on the 1980 Act, a district council may instead choose to adopt Schedule 4 to the 1982 Act.
5. As it happens, no district council in South Yorkshire currently relies on the 1980 Act street trading regime. Those of them that have chosen to control street trading do so under Schedule 4 to the 1982 Act. In practice therefore the 1980 Act street trading regime is not used and could be repealed without effecting any existing exercise of those powers. The continued existence of the 1980 Act street trading regime is unnecessary for the reasons given in paragraph 5 above. The repeal of those provisions is therefore desirable to avoid confusing duplication.

Summary

6. If sections 67 to 78 of the South Yorkshire Act are not repealed they would need to be amended to ensure consistency with the proposed new legislation and to secure compliance with the ESD. However, it is more appropriate that they should be repealed so as to avoid unnecessary and confusing inconsistency with Schedule 4 to the 1982 Act.

Eversheds LLP

Monicapeto@eversheds.com

11th February 2013