



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 March 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
y	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

Comments:

The Acts are clearly out of date in virtually every respect.

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

No

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?

☐ No

Please fully explain your reasons for agreeing or disagreeing with any element of the proposed definition.

Comments:

The proposed size of the receptacle (2mtrs high by 1mtr long by 1mtr wide) is too large and could add to obstructions in the street to the detriment of pedestrians and disabled people; especially exempted pedlars are still required to move around. The fact that currently a pedlar must carry their goods is still a valid distinction as opposed to allowing any kind of trolley or wheeled display unit to be used. If they are permitted to operate in this way it will allow them to unfairly compete with established street traders who pay a fee for their consent.

Similarly other issues within the proposed definition, such as setting the length of time a Pedlar is stationary, will place additional burdens on local authorities to enforce.

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

Comments:

This could unfairly impact on established traders at peak times and seasons on which they frequently rely to make a living. There may also be local ad hoc events (eg. special markets and fairs) during which street trading is sometimes suspended.

Question 4: **Do you agree that only one photo needs to be submitted with street trading applications which are made electronically?**

☐ Yes

Comments:

However compliance with the Directive means that it will not be possible to check that a photo is a true likeness of an applicant where the application is made electronically. Subsequently, therefore, such checking becomes a further burden on local authority enforcement resources.

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

Comments:

Given the reasoning in para 1.32 the removal of the minimum age of 17

years stipulation is logical. However there are some practical implications such as the person may have to make alternative arrangements to move stalls and barrows from the site as 16 year olds cannot at this time hold a drivers licence to drive or tow away items.

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:

We have no records where this Authority has refused an application because an applicant is under 17 years, so we must assume none have been made.

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

Comments:

It may be helpful for the BIS to issue guidance as there are differences in the current legislation between Street Trading Licences and Street Trading Consents, and the guidance should be consistent for both.

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).

☐ No

Comments:

No, as presently set out for street trading consents, competition should not be grounds for refusal of a licence.

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)

☐ No

Comments:

No, new refusal grounds are unnecessary as the authority already has a duty to consult with other agencies and bodies on the practical implications of granting an application for street trading.

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?

Comments:

- (i) This is something we currently explore with consultees at present and would cover issues such as adding an obstruction into the street to the detriment of public safety or amenity.
- (ii) No,

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

☐ Yes

Comments:

Guidance would be essential if it was considered appropriate to implement the replacement ground.

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)

☐ No

Comments:

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?

☐ No

Comments:

No, we do not feel that there should be different grounds for temporary and established traders.

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

☐ 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?

☐ No

Comments:

No we do not apply these grounds to our established traders.

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)

☐ No

Comments:

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?

☐ No

Comments:

With the increase of people coming from outside the UK, there has been an increase in itinerant trading in all areas, Scrap Metal for example. This authority's experience in recent years has been that the number of traders from other EU member states is similar to that of UK Nationals.

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)

☐ No

Comments:

As long as the Council can determine the length of a licence and it can be subject to a review at a given time to take into account any changes within the area in which the licence was granted during the life of the licence.

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

Comments:

We believe that any alteration to the length of a licence would have a neutral effect on the ability of new street traders to obtain licences to trade from this authority.

Question 10.2:

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

☐ Yes

(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:

Up to 3 years but we would wish to be able to review the situation after any new legislation is in place and adjust our policy to best suit the local position.

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

Comments:

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?

☐ No

Comments:

We cannot see any circumstances where temporary traders should be treated differently to established traders on this ground.

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?

☐ No

(ii) Will local authorities continue to use that ground in relation to established traders?

☐ No

Comments:

No it is preferable to have a consistent approach, regardless of duration of the licence whether a temporary or established trader and this will bring it in line with Consents issued under LG(MP)Act where this section is not as a ground for revocation.

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?

☐ No

Comments:

No – this authority, as already stated, does not use this ground in relation to established traders.

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

☐ 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)

☐ No

Comments:

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

Comments:

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

☐ 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:

None

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:

(i) No (ii) N/A

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

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

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:

We concur with the comments of the Local Government Association in that the proposals to exempt Pedlars from a requirement for any kind of authorisation could lead to an increase in door-to-door cold callers and put the public at greater risk of falling victim to rogue traders. The planned changes

may put vulnerable residents at risk and could lead to a street trade free-for-all that risks driving customers away from the high street at a time when councils are working hard to boost growth.

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 ☐ Y

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

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