



## **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**.

Name: *John Copley*

Organisation (if applicable): *Oxford City Council*

Address: *Environmental Development, Oxford City Council, St Aldate's Chambers, 109-113 St Aldate's, Oxford OX1 1DS*

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
<input checked="" type="checkbox"/>	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

☐ No

#### **Comments:**

*Yes as the Pedlars Act is no longer effective and is out of date.*

**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**

*The repeal will have an impact on members of the public regarding house to house sales. If pedlars are no longer required to produce a Pedlars Certificate or ID, members of the public will not know who is visiting their home. We have specific concerns around vulnerable and elderly people.*

*The repeal will also have an impact on local government officers responsible for street trading. Specifically when it comes to enforcement around pedlars operating as illegal street traders. In this circumstance it would be necessary to establish the identification of the individual. Without pedlars having to seek some form of certificate, registration or 'exemption certificate' this will be difficult. As a result we would have to rely on Police resources to identify illegal street traders.*

*The repeal could have an impact on HMRC as without being able to make a positive ID of a pedlar or, holding a register of applications, local authorities can not pass that vital information onto HMRC for tax purposes or refer to for establishing false benefit claimants.*

**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?

☐ Yes

☒ No

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

**Comments:**

*We agree that a pedlar should remain 'on foot'.*

*We disagree with pedlars being able to use a receptacle with or without wheels which he pushes or pulls. The preferred option would be that a pedlar carries his goods on his person without any means of support. By having use of a receptacle, especially of the dimensions found at paragraph 1.16, it is*

*arguable that the receptacle begins to become a stall and makes a pedlar more prone to staying in one site.*

*We consider 2 metres to be a substantial height. In Oxford we only have one pedestrianised street in the City Centre, Cornmarket Street, which the majority of pedlars frequent. We already have public safety and obstruction of the public highway issues with the volume of pedlars and the size of their current receptacles. Cornmarket Street may be pedestrianised however it has 24 hours access for emergency services and is a flash point for large numbers of people. Pedlars currently cause an obstruction on Cornmarket Street. This would be made worse by the proposed definition of a pedlar allowing such a substantially sized receptacle.*

*A possible compromise could be that each Local Authority has the discretion to decide if it is appropriate for pedlars to be aided by a receptacle in their area or not. This decision would be based on an agreement between the District and County Council, Local Police Force and Local Fire Service. This would allow Local Authorities to shape the local area for the benefit of traders, retailers and the general public.*

*If as a result of this consultation a set size for receptacles is introduced we would suggest 1.2 metre high, 1 metre long and 1 metre wide is more appropriate.*

*We would like clarification as to whether a pedlar would be permitted to arrive in a town by use of a vehicle. There is currently case law which states that a pedlar must go from town to town on foot. It is our view that this helps define a pedlar. Currently by arriving in town with a vehicle gives pedlars a 'stock room' whereby they can replenish their receptacle throughout the day. It is our opinion that this does not constitute a pedlar.*

*We would also like clarification as to whether the 50 meters distance is measured 'as the crow flies' or the distance walking on the highway.*

## **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

☐ No

**Comments:**

*The street may be particularly busy at certain times and not be suitable for temporary traders e.g. during large events.*

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

☒ Yes

☐ No

**Comments:**

**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

☐ No

**Comments:**

**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:**

*Approximately 6 per year.*

**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

☐ No

**Comments:**

**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).

☐ Yes

☐ No

**Comments:**

**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)

☐ Yes

☐ No

**Comments:**

**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?

☐ Yes

☐ No

**Comments:**

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

☒ Yes

☐ No

**Comments:**

**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)

☐ Yes

☐ 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?

☐ Yes

☐ No

**Comments:**

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

☐ Yes

☐ 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?

☐ Yes

☐ No

**Comments:**

**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)

☐ Yes

☐ 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?

☐ Yes

☐ No

**Comments:**

**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)

☒ Yes

☐ No

**Comments:**

*A longer licence may offer more security to new businesses starting out. It would enable longer business plans to be drawn up and perhaps better access to business start-up loans.*

**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

☐ No

**Comments:**

*As per comments above.*

**Question 10.2:**

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

☐ Yes

☐ No

**(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:**

N/a

**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

☐ No

**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?

☐ Yes

☐ No

**Comments:**

**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?

☐ Yes

☐ No

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

☐ Yes

☐ No

**Comments:**

**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?

☐ Yes

☐ No

**Comments:**

**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

☐ Yes

☐ 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)

☐ Yes

☐ 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)

☐ Yes

☒ No

**Comments:**

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

☐ Yes

☒ No

**Comments:**

**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:**

N/A

**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:**

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 would like pedlars to have to apply for the exemption in the area they wish to pedal their goods. This would enable us to know who is in our area in order to protect the public if an offence was committed. For EU nationals we would simply require their name, current address, national insurance number, copy of passport or driving licence and a passport style photo. Non EU nationals would be expected to produce documentation proving their right to work in the UK.*
- The benefit of holding these details would be that it allows local*

*authorities to cross reference 'exemption certificate' holders with benefit departments to ensure false claims for benefits are not being made.*

- Currently under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, we only have the power to prosecute an individual who is deemed to be trading without Street Trading Consent. The maximum fine is £1000 per offence and often pedlars are willing to try their luck. It would be more effective if local authorities had the power to seize and store the goods of someone found trading as a street trader without Street Trading Consent. As per the Highways Act 1980, it would also be desirable to charge a fee for seizing and storing the goods. This would act as a deterrent to pedlars who often pitch up and operate as street traders. If a prosecution was not pursued the pedlar would be entitled to reclaim his goods at no cost.*

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 ☒

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

☐ No



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