



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 February 2013**.

Name:

Organisation (if applicable): City of York Council

Address: Licensing Services, 9 St Leonard's Place, York, YO1 7ET

Please return completed forms to:

Name: Rachel Onikosi, Policy Manager

Postal address: Department of Business, Innovation and Skills
Consumer and Competition Policy Directorate,
1 Victoria Street, London,
SW1H 0ET

Tel: 020 7 215 5898

Email: stcompliance@bis.gsi.gov.uk

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.

☐

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
x <input 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?

x ☐ Yes

☐ No

Comments:

In principal, however pedlars should be brought under the umbrella of the current street trading legislation provisions (Schedule 4 Local Government Act 1982) rather than be given exempt status. Local authorities should be allowed to regulate pedlars in the same manner as any other street trader in order to ensure that city/town centres are not inundated by pedlars to the detriment of the area, customers, pedestrians, and other traders.

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

A repeal in the terms proposed will have a detrimental effect on established street traders and businesses. If pedlars are to be totally unregulated, without sanctions or robust enforcement powers in force, there will be no effective control in the way they operate. In competition pedlars would have an advantage over established street traders who are regulated and have to pay street trading fees and over businesses that have to recoup overheads (business rates, rent etc) in the price of goods. There is also potential for pedlars to cause obstruction to access to established street traders and businesses. There will also be no consumer protection on in relation to goods sold or any requirement to provide public liability insurance cover (as required by established traders) to safeguard members of public.

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:

- Consider the size of the receptacle allowed to be too big with the potential to cause obstruction. We have already experienced pedlars trading from units of this size in the narrow streets of York city centre; the units are difficult and hazardous to other road users to move and manoeuvre. This would be a particular problem if the units did not have wheels, how would they be moved?
- There is no restriction to limit the number of pedlars who would be able to congregate in any one place. This would again have the potential to cause obstruction to road users and access to businesses. We have had this experience in York where fire engines have had difficulty passing pedlars in the street who were unable or unwilling to move their units out of the way.
- There is no definition of goods allowed to be sold, this must be defined, and should exclude the sale of food items, otherwise it would not be possible to safeguard members of the public in terms of food hygiene or consumer rights. The definition should also exclude 'live' items for animal welfare reasons.
- Pedlars must move on at a 'reasonable speed', this needs to be defined. There have been instances of pedlars moving at a 'snail's pace', hardly moving at all. Also noted that draft regs will set out how the distance a pedlar has to move is to be measured, the way in which this distance is measured needs to be clearly defined and easy to estimate.
- The reference to 'temporary traders' used throughout the document needs to be clearly defined as references are confusing. Does the term refer to pedlars or does it also include occasional traders operating under a street trading consent/licence. Example of an occasional trader would be a busker selling CDs on an occasional daily basis.
- Why should pedlars be exempt from any form of registration or certification, surely they should be incorporated into the current street trading legislation, rather than made exempt. This would allow Local Authorities to control street trading to the economic and aesthetic benefit of town/city centre with a view to re-invigorating these areas.

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:

Unable to comment as no clear definition of temporary trader, references made throughout the document to temporary traders are confusing. However, the whole of our local authority area has been designated a consent area under Sched 4.

Question 4:

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

X☐ Yes

☐ No

Comments:

No further comment

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).

X☐ Yes

☐ No

Comments:

No comment

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:

Nil

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).

X ☐ Yes

☐ No

Comments:

Any guidance must be clear, relevant and concise.

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:

Not to be able to use this ground would prove contrary to the Government's desire to regenerate city centres as it would have a detrimental effect on

city/town centre businesses. To allow a street trader to sell goods outside a shop selling similar goods would give unfair advantage to the street trader who, although subject to street trading licence/consent fees, does not have the overheads a shop owner has ie business rates, rent and utility bills. This creates an unfair advantage to the street trader who is able to sell goods cheaper than a shop and could result in the closure of shops located in city/town centres with the potential that businesses will migrate to out of town shopping areas. This potentially could be economically devastating to a tourist city like York.

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

Comments:

The ‘suitability’ refusal ground could be used where, for example, a trader intends to trade in goods which appeal to children outside a school.

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:

Unsuitable location – inadequate space (our city centre is made up of lots of narrow historical streets), safe use of the public highway.

Unsuitable product.

It is difficult to estimate how often this would be used, and the costs to the authority.

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

X ☐ Yes

☐ No

Comments:

Any guidance must be clear, relevant 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)

☐ Yes

☐ No

Comments:

No comment

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:

Unable to comment as unable to ascertain what constitutes a 'temporary trader' as this has not been clearly defined and references throughout the document to a temporary trader are confusing. 'Temporary trader' should be

clearly defined and comparative to a permanent trader.

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

☐ Yes

☐ No

Comments:

It may depend on the trading location.

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:

No comment

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:

This does not currently apply to the City of York Council area, unable to foresee any problems resulting from the proposed repeal.

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:

No comment

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:

Local authorities should have the flexibility to determine the duration of trading licences/consents.

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:

It would have a negative impact on new traders.

Question 10.2:

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

X ☐ 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:

Would probably use the discretion to extend to stagger the renewal date to process in smaller numbers, as currently renew 70 consents annually on 31 March.

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)

X ☐ Yes

☐ No

Comments:

Any guidance must be clear, relevant and concise.

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:

Not able to answer until definition of temporary traders is clarified.

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:

Not applicable

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:

Adequate/suitable grounds will need to be in place with regards 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

☐ 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:

Tacit approval should be disapplied to the street trading regulations, as the consultation process in determining an application can be lengthy ie waiting for responses from Parish Councils who do not meet on a regular basis. An application granted on default could be hazardous and detrimental to public health and security, road users, other traders and the environment.

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

X ☐ No

Comments:

No, as our entire authority area is a consent area, potential traders have to have trading consent to allow them to trade and authority already regulates

the type of unit/vehicle trader is allowed to use.

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

☐ Yes

X ☒ No

Comments:

No further comment.

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:

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:

The proposed 'new pedlar' does not appear to be subject to any legal sanctions if they do not operate (trade) in the manner proposed. The only legal recourse would be to prosecute a pedlar as an illegal trader if they failed to act in the manner prescribed. However, current enforcement powers under Schedule 4 LGA, are weak, whereby the offender is not obliged to give personal details to local authority officers, also no powers of seizure of goods are in place to local authorities. The proposal that pedlars will not need to be registered in any way means that customers will have no consumer protection, there is no requirement for pedlars to hold Public Liability Insurance which is a requirement of established street traders. The new proposals will allow pedlars to congregate in numbers, causing obstruction and having detrimental effect on the re-invigoration of city/town centres. These proposals will impact on public policy, public security, public health and the protection of the environment it could force established businesses to close and migrate from city/town centres to out of town shopping areas.

It has taken many years and hours of enforcement by LA officers and the police to ensure pedlars correctly operate as pedlars within the City of York Council area. These steps were necessary to ensure the freeflow of traffic and pedestrians in a small city, as it was once subject to many pedlars congregating at any one time.

Enforcing the new proposals will prove to be costly in time and manpower to local authorities.

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

© Crown copyright 2012

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. Visit www.nationalarchives.gov.uk/doc/open-government-licence, write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

This publication is also available on our website at www.bis.gov.uk

Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

If you require this publication in an alternative format, email enquiries@bis.gsi.gov.uk, or call 020 7215 5000.

URN 12/605RF