



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): Cardiff Council

Address: City Hall, Cathays Park, Cardiff, CF10 3ND

Please return completed forms to:

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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.

<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

X ☐ No

Comments:

Pedlary should continue to be regulated to ensure that it does not cause nuisance or inconvenience to other traders or users of the street.

There is already a problem with high numbers of pedlars in Cardiff city centre and it is likely that repealing the Act will lead to a further increase in numbers. It would be preferable to amend the Local Government (Miscellaneous Provisions) Act 1972 to include pedlary to retain regulation over the activity.

The controls provided by the power to condition the grant of a licence also ensures that the negative effects of the provision of the service by traders, in areas such as visual amenity, waste management, copyright and trade descriptions, are minimised.

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:

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

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

Repealing the Act may increase the number of pedlars in the areas which may affect the trade of neighbouring shops or licensed traders, however the legislation is outdated and in need of modernising

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

X ☐ No

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

Comments:

We feel that a pedlar should not remain an exemption under schedule 4 of LG (MP) Act, the activity is in need of regulation under the street trading regime. It is in the interest of public safety that pedlars are vetted in some way.

With regards to the definition itself, we believe the pertinent issue here to be the time restrictions. There are currently different views on how long a pedlar can remain stationary without acting as street trader.

This definition could potentially cause problems if it does not define a location e.g. is this a street? In Cardiff all pedlars congregate on the same street in the City centre. It is likely that based on this definition this would remain the case as they would move along the street 50 meters at a time and then return to

their start location (on the same street). This can cause obstruction when there are many pedlars trading and is difficult to enforce.

There are already substantial costs for enforcement against pedlars illegally street trading. The time restraints stated within in the definition will increase the burden of enforcing the activity and the associated cost

The proposed dimensions of the receptacle seem very large; perhaps this could be reviewed due to potential for obstruction.

There is also the possibility of the pedlar creating a false audience in order to remain in a position longer, this could cause difficulties for enforcement.

There could potentially be loopholes created by the definition, which will continue to make the activity difficult for local authorities to interpret and 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

X ☐ No

Comments:

none

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:

None

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:

None

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:

Not aware of any applications in the last few years

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

☐ XNo

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)

X☐ Yes ☐ No

Comments:

There may be times when a street is unsuitable e.g. used for an event or street works being undertaken, street use changes e.g. becomes unpedestrianised/trading areas built on etc

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 X☐ No

Comments:

As above - if a street is being used for another purpose.

Costs not likely if enough notice given

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

X☐ 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?

☐ X Yes

☐ No

Comments:

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

☐ Yes

☐ No

Comments:

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?

☐ Yes

X ☐ 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:

No major problems considered, however it is preferable to review a licence periodically to ensure continued suitability of licence in relation to public safety etc.

Indefinite licences could have effect on local businesses and do take into account possible changes in the location

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:

See 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:

Not likely to issue for more than 12 months to ensure continued suitability of trader and location. It is also not know if there would be a demand for licences in excess of 12 months especially in current economic climate

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:

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

X ☒ 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

X ☒ 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

X ☒ 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

X ☒ 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

X ☒ No

Comments:

Local authorities are in a position to know what type of trading receptacle is suitable for the location (with regards to public safety and amenity)

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

☐ Yes

X ☒ 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:

Not applicable

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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:

NA

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:

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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:

NA

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:

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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