



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):

Address:

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:

The legislation does not adequately protect the public. It should be repealed. It is anachronistic and difficult to enforce. The reason why the Local Government (Miscellaneous Provisions) Act 1982 became necessary was in a modern society activities sometimes need to be regulated on the street. Some authorities like Canterbury have found it necessary supplement those powers by seeking to provide private legislation principally to control the activities of pedlars who have the benefit of an exemption. Within the terms of the service directive all people who trade on street should be subject to the same regime.

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

The repeal would not have an undue impact on any group. It would remove an administrative requirement from the police which would also be of benefit to those who presently class themselves as 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?

☐ Yes

☒ No

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

Comments:

The definition is acceptable apart from times and distances; a pedlar in a long high street, could spend the entire day in the same street. The position is further complicated by allowing longer for a transaction to continue outside the suggested 10 minute period. This will provide lengthy legal argument as to whether the pedlar should have moved on or not.

Canterbury will be responding separately via its agents, Sharpe Pritchard and Co on questions 15 to 17 and you will see we favour a time limit of five minutes. Anything more than a de-minimus time to undertaken a transaction turns a 'pedlar' into a street trader.

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:

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:

The proposal only looks at the rights of the young person to sell and does not balance that right with the health and safety of the public.

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:

It is not possible to say.

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:

National guidance is always useful to provide a consistent approach between different authorities.

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:

If the ground is repealed it removes the ability of the authority to manage the street as it creates a presumption of grant. The provision can be put into an acceptable form by additional wording requiring the authority to demonstrate that on grounds compatible with the directive (for example social policy) such as ground of refusal is justified. Without it there may be circumstances where trading too much in a particular commodity for example damages the vitality of street trading itself.

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:

We are not sure of the refusal formula you put forward in the consultation document. We support adding a rider to the existing ground of objection – see previous answer.

Your emphasis is on suitability of the street rather than the activity itself.

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:

The reformulated ground (b) would most likely be used on occasions when so many goods of a particular type were being offered for sale that the vitality of the shopping street was under threat.

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:

See answer to Question 7.2 above

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:

Provision should be inserted to allow for revocation for non-use of a pitch.

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:

Already allow reduced days, seasons etc

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:

Already allow reduced days, seasons etc

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:

Every application should be considered on its own merits.

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:

Every application is currently considered on its own merits irrespective of the nationality of the applicant.

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:

Longer licences will allow traders to make appropriate investments in their businesses and short, medium and long-term business plans.

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 answer to Question 10 above. It will allow authorities to work in partnership with traders if there is a mutual expectation of a long working relationship.

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:

Each application will be considered on its own merits. Flexibility will allow trial periods and development of businesses in response to social and economic changes, supply and demand etc.

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:

National guidance is always useful to provide a consistent approach between different authorities.

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:

If failure to use a pitch prevents the employment / self-employment of another person who could make use of the site.

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:

If failure to use a pitch prevents the employment / self-employment of another person who could make use of the site.

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:

Disapplication where a mandatory ground for refusal exists must be right. Disapplication in other circumstances may also be applicable. This is because at the same time there should be an assessment of whether periods and conditions in the licence and so forth should be revisited.

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:

Vans with diesel engines and/or generators are a constant source of complaint from residents due to noise, fumes etc. We appreciate your propose giving the power to relax this prohibition but it must clearly be on the basis that there are no environmental problems caused as a result of such a relaxation. The fact that such a relaxation can be granted may create a pressure to do so, which may be unhelpful. We would have no difficulty if you left matters as they are.

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:

Please see correspondence from Sharpe Pritchard.

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:

Please see correspondence from Sharpe Pritchard.

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:

Please see correspondence from Sharpe Pritchard.

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:

Please see correspondence from Sharpe Pritchard.

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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