



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:

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.

☐

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?

✓ ☐ Yes

☐ No

Comments:

Yes – subject to them being replaced by a more efficient regime, including better local controls. Currently there are no powers to control pedlary locally – licences could have been issued on the other side of the country with different interpretation of “good character”.

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

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 see comments

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

Comments:

2B (b) (i) – the definition should include a reference to the receptacle not being mechanically propelled or being non-motorised (e.g. you push or pull a lawnmower but the use of an engine on it makes it easier to push or pull). Introducing an element of doubt as to whether the receptacle can be motorised or not would alter the meaning and, potentially, the method of operating for pedlars.

2B(b)(ii) it should be made clear that the dimensions of the receptacle include the wheels or other locutory means.

2C – this must confirm that when the trader moves (after 10 minutes) he takes his receptacle with him. Otherwise we may have receptacles at 50 metre intervals all over the town with a bevy of pedlars working 10 minute shifts in turn on each!

2D (b) 50 metres – measured linearly? As the crow flies/by radius? It could make a huge difference. We would prefer by radius.(para 2 F not clear)

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:

Locally, we have a history of fixed pitches which we would seek to protect. We would wish to promote sales of specific classes of goods e.g. local artists - local licensing makes it possible to protect consumers more easily from non-genuine trades people selling poor quality or non- local works. This invokes the protection of customers and combating fraud over-riding reason relating to the public interest (ORPPI's) .We also need to protect the local economy by safeguarding local trades people and small businesses who pay for planning permission and fixed pitches.

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:

No. For enforcement purposes, it is clear to calculate if a person is over 17. The definition of “over compulsory school leaving age” is more difficult to calculate. What about foreign nationals? When do they become “over school leaving age”? Street traders can currently have youths on his/her licence so youngsters can work – but can’t hold the licence themselves until 17. This seems reasonable.

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:

Difficult to predict – currently we have none.

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

x ☒ No

Comments:

The Act is clear – no guidance needed.

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:

This is a difficult one - whilst we recognise the need for competition and the value of the Services Directive, and may find it hard to justify 3 (6) (b) remaining in its current form, there may be a justification for the revised refusal ground.

As for the “street being unsuitable” – this could cover issues of health and safety – e.g. Public health – if narrow, cobbled street/ narrow pavements and 2 metre high receptacles – could this constitute a public health risk?

Also – there is a tension between the Directive and duty of local authorities to consult with frontagers under section 115 of the Highways Act to obtain the consent to stalls from local trades persons – who almost always refuse consent if competing goods are involved. Yet, apparently, local authorities will not be allowed to refuse consent despite inability to grant consent under this competing Act.

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:

See above.

As to costs – yes likely to be costs. Difficult to estimate until we know what ground would say.

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:

See above.

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:

Yes.

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:

No – not temporary traders

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:

Just temporary traders – we'd want to keep using it for permanent traders

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

✓ ☐ Yes

☐ No

Comments:

Yes – we do have demand for licences and have occasion when licences are being under used e.g. a trader has a licence to trade 5 days a week but only turns up 3 times a week. We want flexibility to be able to manage that trade locally – we have a waiting list of people wanting pitches.

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, provided we can still refuse on basis of underuse as at present.

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

x ☐ No

Comments:

No – pitches are open to tender

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

x ☐ No

Comments:

Would welcome this change.

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:

Ultimately, this would have a negative impact on ability of new traders to obtain a licence as licences are likely to be given for a longer period of time so would not be available as often.
However, the longer licence would make to pitch desirable - and would attract a greater number of applicants.

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:

More than 12 months, not indefinite: probably 3 years.

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

x ☒ 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

☐ No

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

✓ ☐ Yes

☐ No

Comments:

Continue to use it in respect of established traders

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

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

x ☒ No

Comments:

We welcome these proposals

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:

We welcome the proposed relaxation.

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

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:

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:

- | |
|--|
| <ul style="list-style-type: none">(i) Our local street trading Act (the Cheshire County Council Act 1980) has been screened but no formal decision has been made.(ii) We do not need to repeal section 30 of the Act as it sets out a framework only but are considering asking you to repeal section 30 of the Cheshire County Council Act in the interests of simplicity and to avoid duplication with the schedule 4 provisions. We have not yet reached a conclusion. |
| |

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:

None

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:

We are considering if there is any merit in keeping section 30 which militates against its repeal.

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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