

STREET TRADING AND PEDLARY CONSULTATION

Question 1: Do you agree with the proposed repeal of the Pedlars Acts 1871 and 1881 UK-wide?

No. It is useful to have a certificate available so that pedlars can be identified, firstly for the consumer but also for the Local Authority if a prosecution is being considered whether for street trading or Trading Standards purposes; i.e. there is a requirement in the Pedlars Acts for the pedlar to produce their certificate. The complete repeal of the Pedlars Acts will effectively give licence for anybody to trade on the street, or house-to-house, with complete anonymity.

If the Pedlars Acts are to be repealed, Leeds City Council only agrees with the proposed repeal of the Pedlars Acts providing that an appropriate and workable up to date definition of the behaviour that constitutes acting a pedlar for the purposes of the exemption from the street trading regime is brought into force.

For more detailed responses on the proposed definition please see our later answers.

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

Leeds City Council does not agree with the proposed new definition of pedlar for the purposes of the pedlar exemption from the national street trading regime.

Leeds City Council considers that in a number of the elements the proposed definition there are significant problems posed for enforcement that undermine the ability of Local Authorities to monitor and enforce the street trading regime.

It seems that in drafting the proposed definition, the Government has attempted to reflect existing case law. In many areas the case law is unclear and inconsistent. That already leads to problems of enforcement for Local Authority staff as a direct result of which a number of Councils have chosen to promote private bills before parliament. This was one of the reasons behind our promotion of the Leeds City Council Act 2013.

We consider that the definition now proposed does nothing to resolve those issues.

In particular we disagree with the following:-

- The proposed dimensions of the trolley in national legislation are larger than those already allowed by certain pieces of local legislation which, in our view, are compatible with the services directive. If those private acts have been subject to detailed scrutiny by parliament it seems appropriate to us that they should form the basis of any new size requirement.
- We disagree with the proposal that a pedlar can remain static in the same location for a maximum of 10 minutes and then move to another location at least 50 metres away. A pedlar may not then return to a location he has previously occupied within

3 hours of leaving it nor within 50 metres of any location occupied during the previous 3 hours.

We believe that 10 minutes is too lengthy a period, that 50 metres is too short a distance and even with the requirement to move to a location not occupied within the previous 3 hours a pedlar, relying upon this definition, would be able to operate in many large city centres for the whole day with relatively little movement.

We also have concerns about the proposal that a pedlar who is approached by one or more potential customers may remain stationary for more than 10 minutes or move to a location less than 50 metres from the first location. It would be possible for a pedlar, working in conjunction with another to circumvent the regulations whereby that other person, posing as a customer, would be able to approach the pedlar after 9 minutes allowing him/her to remain in one location. Alternatively that other person could approach the pedlar within 5 metres of the previous location allowing the pedlar to remain stationary for another period.

The regulations as drafted do not specify whether the 10 minutes period starts again or whether the 50 metre rule is to be observed from the first location or any of the interim stopping places.

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?

We consider that to designate a street in relation to established traders but not temporary traders would be confusing to both public and traders alike and extremely difficult to enforce.

Leeds currently designates streets either as consent or prohibited streets. Streets are designated for reasons of public security or the protection of the environment, which are reasons applicable to both established and temporary traders

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

We agree that only one photograph needs to be submitted with street trading applications which are made electronically.

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.

We agree with the proposal to replace the mandatory refusal ground. The 1933 Act provides adequate protection. We do not receive, nor anticipate many applications made by those under 17 years of age.

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?

The requirement to act in a manner compliant with the directive falls to Local Authorities who would be responsible in the event of infraction proceedings.

Any guidance issued by BIS would not be binding on Local Authorities but it might be helpful to Local Authorities seeking to implement a lawful licence scheme.

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.

We would urge the government to discuss this matter further with EU partners.

Given the need to create vibrant and diverse shopping destinations on Britain's high streets in order to boost the economy and given that councils already enjoy certain powers under the provisions in the Town and Country Planning legislation, it is unfortunate to lose this particular ground for refusal at this time.

It is difficult to envisage what a new replacement suitability refusal ground would be used for since it would require a decision that it is the type of goods which are unsuitable to be sold in that street as opposed to the fact that the street is unsuitable for the sale of goods generally in which case it would be designated as a prohibited street.

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?

Leeds City Council currently operates a consent regime rather than a licence regime.

Nonetheless as a general comment we consider that a regime which draws a distinction between established and temporary traders (in the language of the directive) is likely to be confusing to both the public and traders alike.

We would also question how a Local Authority would have the information available to it or, the power to seek the relevant information, to judge whether a trader is in fact an established or temporary trader.

By the nature of street trading and pedlary many members of the public would consider all street traders and pedlars to be temporary i.e. not operating from a fixed base.

Thus, whilst we can appreciate that amendments might be considered necessary to comply with the directive we consider amendments which draw this distinction to be unhelpful

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?

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?

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

(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?

Leeds City Council currently grants street trading consents rather than licences.

Nonetheless within the consent regime the Council must itself act compatibly with the directive. These comments are therefore made on the basis of their implication for how the Council will operate a consent regime.

We do agree with the proposal to give Local Authorities the flexibility to grant licences for longer than 12 months however we would have concern that within popular and busy areas of the city centre there is excess demand for our street trading pitches which exceeds the available supply and therefore we consider that the minimum duration of a licence should remain at 12 months with the flexibility to grant a longer licence should circumstances permit.

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?

Leeds City Council currently operates a consent regime. Consents can be withdrawn at any time.

However we do consider that the distinctions drawn within the directive and regulations between established and temporary traders are likely to be confusing to the public and traders alike.

We do think that it would be useful to have some guidance in this respect.

Question 12: Do you foresee any problems with our proposals

(i)

To disapply regulation 19(5) of the PSR where a mandatory ground for refusal of the application exists; or

(ii)

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

We do not currently operate a licence regime.

However we would prefer that Local Authorities have the power and discretion to decide whether to put arrangements in place disapply regulation 19(5) in circumstances beyond the mandatory grounds for refusal and to specify the conditions that will automatically attach to a licence which has been deemed to be granted under that regulation.

We consider it is important that Local Authorities maintain the maximum flexibility to determine what is right and appropriate, within the law, for their local area.

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?

Leeds City Council currently operates a consent regime within the entire district save for one street which is a prohibited street.

In relation to the mandatory ground for refusing street trading consent based upon age and the disapplication or deemed consent in regulation 19(5) we refer to the answers given above.

The proposal to amend paragraph 7(7) - Relaxing the prohibition gives Local Authorities the maximum amount of flexibility and to that extent this proposals is welcomed.

In relation to the duration of street trading consents please see our answer above.

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

We do not foresee any problems with these proposals.

Q15-17

Please see the detailed response from Messrs Sharpe Pritchard on these issues.