



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): Fylde Borough Council

Address: Town Hall
Lytham St Annes
Lancs
FY8 1LW

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
<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?

X Yes

☐ No

Comments:

The legislation is outdated and in need of review. However, the repeal has the potential for a significant impact on town centres unless some form of checks and balances is introduced. There are concerns amongst members that the repeal may lead to an increase in unscrupulous persons who may prey upon the elderly and vulnerable and that the Police would be unable to deal with the problems this may bring. Furthermore, the proposals may encourage street trading and cold callers with a negative impact on local businesses.

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

It is considered that the repeal may impact upon local shops through loss of trade and upon Senior Citizens and tourists.

We are also concerned that through a relaxation we would be effectively losing control of trading that takes place in the Borough and it is contrary to the aspirations of the Localism Act.

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?

x Yes

☐ No

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

Comments:

The definition and requirements for a Pedlar are welcomed in terms of the clarity they provide.

However, we have concerns regarding the receptacle a Pedlar may use to assist them in their trade. The size of such a receptacle may allow the type of traders in town centres that a Local Authority has been discouraging such as hot food stands. Whilst acknowledging that other legislation exists in terms of food safety and health and safety, the use of a receptacle may lead to the sale of items that are not in keeping with an area.

The size of the receptacle permitted is similar to the “dollies” used in supermarkets when shelf filling and we do not feel these are appropriate for use on the streets.

Again, whilst welcoming the provision of definitive time limits as to when a trader should move on, we feel it should be acknowledged that teams of Pedlars could effectively trade all day in a Town Centre by simply moving on and another Pedlar taking their place.

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:

No – our Street Trading Policy takes into account large scale events which may take in the Borough and our fee schedule is tailored as such. We see no real difference between established street traders and temporary traders.

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:

Yes – modern IT systems allow for the scanning in and electronic storage of photographs – this seems to be a logical step.

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:

As with other newer pieces of legislation relating to licensing, if a more appropriate piece of legislation is available to deal with an issue – such as the age of traders – then that legislation should be used. However, district Councils may have no effective authority or resources to adequately enforce the provisions of the Children and Young Persons Act.

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:

Unknown. However, since 2003, no applications for street trading consent have been received from persons aged under 17.

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:

Yes – Guidance would always be welcomed to provide clarity.

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:

N/A – this Authority does not issue street trading licence, but consents.

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:

n/a

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:

n/a

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:

n/a

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:

n/a

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:

n/a

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

☐ Yes

☐ No

Comments:

N/a

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:

n/a

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:

n/a

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:

n/a

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:

n/a

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:

n/a

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:

n/a

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:

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:

n/a

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:

n/a

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:

n/a

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:

n/a

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:

Providing the ability to restrict the use of stalls etc above a certain size on proper grounds remains, we see no challenge with the prohibition being relaxed. However, whilst acknowledging the EU Services Directive and its aims, we are concerned about the ability to make local decisions appropriate to the Borough and the impact upon localism.

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:

n/a

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:

Fylde BC have not designated any areas in relation to touting or hawking under the County of Lancashire Act

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:

As referred to above, Fylde Borough Council would welcome the intention to define a Pedlar and what this may entail. However, the use of what we consider to be a large stall may lead to a proliferation of pedlars in a Town Centre and detract from the work that Councils, including Town and Parish Councils, have done to ensure their town centre areas are vibrant, attractive and welcoming.

An increase in Pedlar activity will have a negative impact upon the local business and traders.

We feel our street trading policy currently addresses the needs of the Borough and is inclusive. We would prefer not to see the ability to trade on the streets extended and we feel that we should be able to maintain a degree of control

over who may trade on the streets.

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