



## **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:

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](mailto: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

☐ No

#### **Comments:**

We agree with the proposal to repeal the Act as it is outdated and does not comply with the Directive, in that the current certification scheme is discriminatory and is not applied consistently. Furthermore the certification scheme is not effective in managing the pedlars within an area.

However, we feel that such a repeal MUST be supported by a new authorisation scheme for pedlars under the Local Government (Miscellaneous Provisions) Act 1982.

We would hope that the new licensing scheme would be administered by local authorities in conjunction with their street trading responsibilities. Without such a scheme we foresee:

- An increase in rogue traders exploiting of vulnerable people in house to house peddling.
- An increase in the potential for distraction burglaries
- An increase in pressure selling at the door.
- Lack of consumer protection as sales are made without full contracts and awareness of who the sale is with
- An increase in counterfeit and dangerous products
- An increase in street disorder due to pressure selling, conflict with existing street traders and businesses, and street overcrowding

**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

Any repeal without the introduction of a new licensing scheme will cause considerable detriment to:

- Vulnerable residents – would be exposed to rogue traders and distraction burglaries caused by an expected increase in the number of house to house pedlars
- Consumers – would be exposed to potential counterfeit and faulty goods and unsafe products from pedlars who cannot be identified because of their transient nature
- Residents – would be exposed to nuisance sales by an increase in both house to house and street pedlars
- Legitimate businesses including static street traders may be affected by unfair competition if pedlars are selling counterfeit/unsafe/poor quality goods that are cheap because they do not comply with legislative requirements.
- Police – will have to deal with potential disputes between pedlars and static street traders/businesses

**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:**

We believe that pedlars should remain in transit at all times except at the point of sale. Furthermore that their receptacle should be no more than one cubic metre.

We believe that the current proposals both on stopping time and receptacle size plus the lack of an authorisation scheme would lead to the following problems:

- An increase in rogue traders exploiting of vulnerable people in house to house peddling.
- An increase in the potential for distraction burglaries
- An increase in pressure selling at the door.
- Lack of consumer protection as sales would likely be made without full contracts and awareness of who the sale is with
- An increase in counterfeit and dangerous products
- An increase in street disorder due to pressure selling, conflict with existing street traders and businesses, and street overcrowding
- The size of the receptacle is far too generous (1m x 1m x 2m) and may cause obstruction of the highway.
- The ability for pedlars to pull receptacles and stop for 10 minutes may result in the gathering of pedlars at any one location, setting up a de facto market before moving on to another location 50 metres away and doing the same again.
- The ability to stop for 10 minutes may be exploited and as such local street traders may become disgruntled and aggrieved at having to pay for a consent to trade whilst pedlars are not. This will be a difficult condition to 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

☒ No

**Comments:**

In all circumstances there will be issues around public security, public health, consumer protection and protection of the environment, regardless of the type of street trader. There we would prefer the current consenting regime for streets/areas to remain and be applicable to both established and temporary traders.

Indeed any diversion from this may be seen unfair and discriminatory against established traders, who will require a licence/consent to street trade while the temporary traders will not.

**Question 4:**

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

☒ Yes

☐ No

**Comments:**

Yes, as one photograph is sufficient in electronic form.

**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:**

N/A

**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:**

We cannot estimate an actual number at this time as we have no statistical information on which to base any approximation.

**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:**

We would prefer guidance not to be issued, as this would leave local authorities with the ability to interpret the legislation. Guidance may be counterproductive as it may be too restrictive.

**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:**

We believe that use of this ground presents public security problems. We are aware that there have already been conflicts between street traders and businesses where competition has arisen.

However, the anti competitive nature of this ground for refusal may outweigh the public security issues.

**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:**

The new replacement “suitability” refusal ground would enable the local authority to limit trading in an area to maintain public security/safety, public access, maintaining the amenity of the area and emergency evacuation procedures.

**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:**

(i) We may use this ground to protect the historic character of a locality e.g. any sort of street stall may be deemed to be unsuitable next to a cathedral or listed building. We cannot estimate how often we would use this proposed ground

We would use this ground where we considered that the granting of a licence would negatively impact on public security/safety, public access, maintaining the amenity of the area and emergency evacuation procedures.

(ii) We cannot estimate costs at this time as we have no statistical information on which to base it.

**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:**

We would prefer guidance not to be issued, as this would leave local authorities with the ability to interpret the legislation. Guidance may be counterproductive as it may be too restrictive.

**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:**

We recognise that the refusal ground may be incompatible with the Directive in relation temporary traders; however it seems unfair to impose it on established traders alone. We consider that this may discriminate against established 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:**

We would like the discretion to apply this ground to established traders if we felt this was appropriate.

e.g. where the local authority wants to encourage street trading to enhance the vibrancy of the street scene.

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

☒ Yes

☐ No

**Comments:**

It must be noted that we do not use these grounds as we issue 7 day consents and do not specify a minimum of days. However we would like to continue to have this ground in case we need to use it in the future.

**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:**

By limiting the circumstances in which these grounds could be used, the process can be seen as fair. It would be unfair to impose these grounds when there is no demand from other street traders.

**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:**

This paragraph should be repealed as preferential treatment for persons previously licensed under local Acts would be discriminatory.

**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:**

UK nationals are more likely to have been granted a licence under local legislation and hence would be in a better position than new applicants.

**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:**

The nature of areas and streets change over time. Developments for regeneration, for instance, may impact on the need for street trading. As such, licences over 12 months may prevent progression of development 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:**

Negative – long length licences would exclude the opportunity for new applicants. Indefinite licences would make it nearly impossible for new applicants to establish themselves.

**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:**

We would prefer guidance not to be issued, as this would leave local authorities with the ability to interpret the legislation. Guidance may be counterproductive as it may be too restrictive.

**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:**

We recognise that the refusal ground may be incompatible with the Directive in relation temporary traders; however it seems unfair to impose it on established traders alone. We consider that this may discriminate against established traders.

**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:**

We would like the discretion to apply this ground to established traders if we felt this was appropriate.

e.g. where the local authority wants to encourage street trading to enhance the vibrancy of the street scene.

**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:**



By limiting the circumstances in which these grounds could be used, the process can be seen as fair. It would be unfair to impose these grounds when there is no demand from other street traders.

**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:**

It makes complete sense to ensure that where there is a mandatory refusal ground that this should take precedence if for some reason the application is not processed within the specified time.

Furthermore, we are in agreement that local authorities should be able to disapply the regulation or specify conditions to be attached to the licence. This will prevent licences being granted due to administrative errors or backlogs, when they would not otherwise have been granted.

**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:**

This proposal will give local authorities the power to relax the prohibition if they see fit, therefore this fits in with our ethos of considering every application on its merit and also enabling consideration to be given to local circumstances.

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

☐ Yes

☒ No

**Comments:**

It is important that we maintain enforcement powers in relation to the requirements of the Act.

**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:**

We do not use any local acts to enhance street trading legislation.

**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:**

N/A

**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 to Birmingham City Council.

**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:**

COMMENTS TO BE INSERTED FOLLOWING CONSULTATION WITH LICENSING AND PUBLIC PROTECTION COMMITTEE.

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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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

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