



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: Stephen Meale
Organisation (if applicable): Bristol City Council
Address: Policy Coordination Unit, Princess House, Princess Street,
Bedminster, Bristol BS3 4AG

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.

| | |
|--------------------------|-------------------------------------------------|
| <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We suggest that the legislation needs to be amended significantly rather than being repealed to ensure compliance with the European Services Directive. We suggest that the power to issue certificates should be given to the local authority.

There are often tensions between ensuring compliance with the Directive, which is aimed at reducing the burdens on business, and legislation providing consumer protection.

The proposals would give pedlars a significant advantage on market traders and street traders by relieving them of the burdens of regulatory control through the use of the proposed exemption within street trading legislation [the Local Government (Miscellaneous Provisions) Act 1982]. BIS make mention in the section 'Wider Intention to Reform the Street Trading Regime' of their intention to seek views on the possibility of giving more effective enforcement powers to Local Authorities to help them enforce the reformed regime. Effective enforcement is critical and from experience forms the response to the majority of problems encountered, especially when responding to concerns raised by the public, existing street traders, market traders and retailers. BIS should be obtaining views and taking advice on this matter now and any agreed changes introduced in conjunction with the proposed regime reform. Enforcement of the existing Pedlars regime is extremely challenging and there is nothing obvious in the proposals that would provide any assistance to those officers/persons tasked with carrying out the enforcement role.

Doorstep Crime (in all it's forms) remains a significant concern for Trading Standards so any legislation that can help protect vulnerable consumers should be retained. Doorstep Crime manifests itself in many forms but of direct relevance here are so called 'Nottingham Knockers'. The repeal of the

Pedlars Act and subsequent exemptions provided by the new proposals would leave this particular form of criminality unregulated in the absence of wider criminal conduct.

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 of the legislation essentially proposes that no permission would be required for a pedlar. This is likely to have a negative impact on a number of groups including street traders and consumers.

Most city centres at night have their fair share of rose sellers/hat sellers etc that when challenged by regulators present a Pedlars certificate which is usually issued by a police station outside the local authority area. The current process for the issuing of pedlars certificates is not efficient with little management control or governance arrangements. Therefore if the proposals as drafted are implemented then there will be no meaningful regulatory control of pedlars.

The Police, Town Centre Managers and Local Authority regulators will also face an increased burden in trying to establish whether traders acting as pedlars meet the new proposed definition of a pedlar and can therefore have the benefit of the exemption provided within the revised street trading regulations. If such a proposal was implemented consideration might be given to requiring pedlars to have an exemption certificate.

With no controls on pedlars there is also the potential impact on consumers in respect of a likely increase in doorstep crime. Many local authorities have worked hard to establish No Cold Calling Zones. These proposals do not refer to such zones and the likelihood with these proposals is that there could be an increase in the number of door to door sales nationally.

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:

Whilst the attempt to provide a definition of a pedlar is a positive step it does raise concern as to how the definition will operate in practice specifically in the area of enforcement . Enforcement of the existing Pedlars Act has proved to be of an ongoing concern and as shown in BIS consultation document (Chapter 3 - 1.73) some Local Authorities have introduced additional enforcement powers through the provisions of Local Acts to enable more effective enforcement.

Presumably under the proposal an offence under street trading legislation will be committed if a pedlar fails to comply with the exemption provided in the draft proposal as under the government proposal there would be no pedlar certificate to take action against. The proposal does not appear to put a limitation on the number of pedlars that can trade in a particular location. This could lead to a variety of consequences if a number of trading receptacles are being moved in and around busy shopping areas at any one time. Simply on the basis of operating a safe environment for the public, serious consideration should be given to introducing a limit on the number of pedlars operating in any one area.

There is no reference to restricting the type of goods that can be sold by a pedlar. A restriction should be considered on the basis of achieving a complementary retail offer rather than one of directly competing with existing street or market traders. There has also been no consideration in respect of No Cold Calling Zones or properties displaying a notice (No Cold Calling Sticker).

If the power to issue certificates should be given to the local authority factors such as proposed location, site, types of goods to be sold etc could be taken into account.

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:

It could be argued that a local authority may want to protect established traders at particular locations when higher profile events take place which could attract a flurry of temporary traders.

Unregulated Pedlars are often associated with the sale of unsafe toys and counterfeit goods. Recent examples include pedlars at Carnivals selling unsafe toys with dangerous lasers incorporated in them.

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:

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:

Minimal

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:

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:

Probably not, however the ground has been useful to help encourage a mix of different types of trading activity at a location. This is particularly relevant to the night time economy where that ground has been used to reduce the proliferation of late night hot food traders. Concentration of this type of trader can cause a crime hotspot although it is accepted that activity after 23.00 would be caught by the Licensing 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:

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?

The ground would probably be used rarely however there may be occasions where certain trading could promote tensions at some locations, perhaps if the goods offered did not fit with the community profile

(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:

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:

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:

Probably not

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:

Yes your proposed approach is preferable as opposed to repealing the grounds completely. The Local Authority needs to be able to take action against established traders who fail to make use of their licence.

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

☒ Yes

☐ No

Comments:

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:

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:

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

☒ No

Comments:

No, as long as it is directionary.

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:

This would very much depend on the level of demand for licences and other factors such as the desire to regenerate an area by giving licence holders a greater security of tenure, so it is difficult to give a precise response.

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:

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:

Possibly

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:

There could be situations where a local authority receives a series of temporary applications, which are not used and may have the effect of preventing other traders from having the opportunity to trade. If the same applicants reapply for future temporary permissions then the licensing authority may be able to take non-use of the licence as a ground for future refusals. We would anticipate that the ground would be of benefit to local authorities in relation to existing 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

☒ 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:

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:

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:

No comment

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:

No comment

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:

No comment

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:

No comment

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:

No comment

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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