

Consultation Questions: England and Wales

Below we set out a variety of questions in relation to our draft set of regulations.

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?

In Answer to this specific question our answer is YES. This is out of date legislation that is used to confuse the activity of street enforcement teams and as the BiS's own document reveals is used by part of the 'Pedlary fraternity' who argue an 'emotional attachment'- which is a ruse for operating in the context of the modern High Street in order to avoid street trading law.

Our general position is that all existing street trading law should be repealed and replaced with a single, simple and universally applied regime which eliminates the current varied definitions of traders. At present this is giving 'Pedlars' a distinction that is totally unnecessary, particularly as the traditional 'pedlar' as per the original acts definition no longer exists.

A new, single street trading regime would eliminate the vagary and misinterpretations caused by the existing hotch potch of law and the plethora of local laws that are coming forward. It will enable meeting EU legislative requirements. Most of all it would allow clarity across the area of what is and what is not permissible, and will be clear as to whom authorises and regulates the activity.

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.

Repeal of the Act will enable simpler street trading enforcement, by driving the activity of Pedlars into either Street Trading Law, or Charity Fundraising. As a result countless wasted hours of Local Govt enforcement officer, Licensing Officer and others will be saved...this will have direct benefits on Rate payers/ tax payers etc.

It will also pass on benefits to the general public (consumer) as the merchandise or service provided (and even the legitimacy of some of the items offered for sale) will fall into a street trading context with the benefits of product / service quality standards which will as a result be greater as the operator would not wish to risk a loss of license through failure to provide a good product or service standard.

The benefits derived through any regular licensing scheme applied to all street traders should not be overlooked and any subsequent considerations should seek to ensure that all street traders, irrespective of their temporary or permanent status should be licensed by the area they choose to operate in. Such an approach would not confound the directive as it would apply to all traders irrespective of their point of origin.

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. Street Trading and Pedlary Laws – Compliance with the European Services Directive 33

Generally speaking we are supportive of the approach that you are taking, this is reflected in our own legislation, The Bournemouth Borough Council Act 2010, which has imposes similar provisions.

Our only suggestions are that the times and distances suggested in the consultation document are far too generous to accommodate a typical Town centre/ City Centre area. The Bournemouth Act allows ‘Five Minutes’ in any one location with a requirement to move on 200 metres before stopping again to trade for upto 5 minutes. Further the ‘return’ time is 12 hours (not your proposed 3).

Our experience during the last 2 years since the Act was passed is that these timings and distances appear to work well in a city centre location. Adoption of the Bis proposed times laid out in the consultation document would enable a team of street vendors to ‘circulate’ around a city centre all day, masquerading as ‘pedlars’ and as a result turn a city centre into some wierd revolving street market – and I do not believe this is what the Bis are seeking to deliver to the high footfall areas of the cities of the England and Wales – it is precisely these large ‘gangs’ of Street traders that we have sought to eradicate, and your proposals would not achieve that.

If there are any genuine Pedlars they could easily operate within the context of the times and distances currently included in the Bournemouth Borough Act 2010.

Our general position is that it is counter-productive to create separate distinctions and definitions of the type of traders at work. Our practical experience indicates that less than reputable traders use such distinctions to confound enforcement, this increases the cost of street trading to local communities. A single licence driven regime would eradicate any vagaries and create a simple, clear regime that is easily understood by street traders and prospective street traders and also the enforcement community.

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? (paragraphs 1.25 – 1.27)

Yes. We are a city centre urban shopping environment and a sea front.

High street commercial areas need the protection afforded to established traders by current legislation. If this is removed, and the subsequent suggestions adopted, most High Streets will deteriorate into something resembling third world street markets, as the temporary trader would target high footfall areas. Such adoptions would be one more step in the demise of Town Centres. This is doubly vital in town and city centres where there is any historical or special character backdrop.

Seafront areas are worthy of special consideration. Seafronts attract people and footfall and established traders pay licence fees or rates to operate there. Rates and fees are based on the commercial value of that property. Local Authorities seek to limit the amount of street trading in special areas in order to preserve the character and ambience/ amenity of such locations. If you allow unbridled street trading to take place on these areas you will undermine the established trade, and most likely destroy the merit/ attraction of that specific location by creating some form of street market.

It is vital that Consent streets remain as an option in order to protect the amenity / attraction of special or character areas in England and Wales.

Question 4: Do you agree that only one photo needs to be submitted with street trading applications which are made electronically? (see paragraph 1.28 above)

Yes.

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. (Paragraph 1.32).

We disagree with this proposal. In para 1.30 you rely on the UK state education timetable as describing the definition of a child. The only reason you are having this consultation is to accommodate EU legislation...so, if I were, say an EU national, and just visiting the UK with a plan to trade...how could this legislation apply to any child who was accompanying me? what does the definition of 'child' mean in the country from which I originated? What legislation defines the attitude to minors working from other EU states or applicable to the traders state of origin? And would this therefore become restrictive as per the EU directive.....better to state an age, which is undisputable when applying enforcement in the UK- unless you can point to some EU directive that defines 'child' universally across EU.

You cannot answer this question clearly without knowledge of what universally applied definition of 'Child' is across the whole of the EU.

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?

None. Currently we receive around 4 enquiries a year from Minors, none of which progress to an application.

We are aware however of children (mainly quite young say 9 to 12 years old) accompanying and participating in the trade activities of a number of temporary street traders operating under Pedlars certificates. These minors are regularly at work during school hours.

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

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. We believe that Protection of the Environment and public safety are relevant here. As stated earlier, there are many locations that through their unique Historical, Cultural, Natural or amenity driven value, could be overrun by street traders if there was insufficient conditions to prevent or restrict street trading. This over-targeting could damage the 'look' and feel of a location to the detriment of the visitor experience.

The overcrowding of an area by street traders could (particularly in Historic areas) present a real danger to the easy exit or escape route from a place. Examples would be Town Centres when holding a Christmas Light switch on event, Celebrity appearances etc – all events where plans have been made to maintain public safety, but where the unexpected arrival of barrow pushing street traders prevents adequate movement – therefore undermining any local Authority safety plan and risk assessment.

In the case of popular sea front locations, an endless sweep of street traders peddling wares could completely destroy the ambience and amenity of resort locations. We foresee that, by their specific historical or natural environment some areas would

become overwhelmed with traders many of whom would be seeking to provide goods and services that are totally irrelevant to the location/ situation, and as a result would clutter the environment and destroy the very essence of the area that would be over-targeted by potential traders.

We urge the department to consider that street traders go to where the people are, not the other way round, and excessive relaxation of rules and conditions will expose unique areas to an over-concentration of street trading.

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. The standards of ‘care’ afforded to purchasers/ public is widely different across EU states and as a result some ‘qualification’ or exertion of ‘standards’ must be appropriate.

Question 7.2: In relation to this new ground, can you tell us:

- (i) In Bournemouth we are inundated with street trading requests each week. We have to be able to delineate an area that , due to its nature or special attraction is unsuitable for street trading. Imagine your walk by the sea-front...it would deteriorate into some sort of haphazard street market which would be vending Burgers, Tattoos, sandwiches, Ice cream, Jewellery...is this what the public would expect our adoption of an EU directive to create? Is irrelevant street vending what visitors would expect on a sea front promenade?
- (ii) In what circumstances you would use this ground and how often?
We would expect to use this quite regularly in order to protect our unique asset for the enjoyment of the public.
- (iii) 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 we anticipate additional costs – the cost of enforcement and providing street trading guidance uses officer time. It is likely that we may need to engage a dedicated officer to answering street trading requests/ information and increase the number of enforcement officers.

Question 7.3: Would it be helpful for BIS to issue guidance on the circumstances in which this replacement ground could be used?

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)

We believe that providing a difference in the definition of a street trader (temp or permanent) produces a confusing picture which will impact on good guidance and enforcement. If all street trading were in one single definition and required one single licence from one single point then we doubt any directive would be compromised. By maintaining two definitions seems to create a problem, If ALL traders had to apply for a local licence, this would be clear to all traders irrespective of point of origin.

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?

We believe it is wholly impractical to create two definitions of street traders. We would wish to retain this ground however for 'permanent traders' if the department pushes ahead with the 'two definition' approach.

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

Yes, that is our intention. Our licences are granted to animate an area and provide vibrancy, any under-utilisation would fall short of visitor expectation and we would want to fall back on this ground as a last resort.

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?

We repeat, our view is that a single street trading regime should apply to all street traders irrespective of their operating methodology. One policy, one source of authorisation with one source of enforcement will deliver clarity, a clarity that would apply to all traders irrespective of point of origin and deliver conformity with the directive.

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)

No we foresee no specific problems. Such amendment withdraws another complication surrounding street trading.

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?

We feel the scenario is somewhat academic.

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)

No we foresee no problems where an authority has a clear policy and enforcement operation in place. By providing Local Authorities with flexibility then authorities can accommodate this within their individual policy framework and decide the duration of licences applied.

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?

We believe this would be a neutral impact for the street trader. We believe it would be a Negative impact on street trading as a whole however, as the majority of Local Authorities nationally would likely default to issue long term or indefinite licence, which could suppress competition and lead to lower standards of operator.

Question 10.2: (i) Whether you are likely to issue licences for more than a 12 month period of indefinitely? **No. We would seek to limit license period in order to maintain the ability to refresh our offer and keep licence holders 'on their toes' and meeting the requirements specified in a licence.**

(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? **Not applicable**

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**

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? **Definitely. If a licence were granted for any extended period of time, and a holder did not make use of a licence, then that could be preventing another potential applicant from gaining a licence and executing some worthwhile trade. This appears to be a perfectly sound circumstance that applies equally to Eu and resident applicants.**

Question 11.2: 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? Will local authorities continue to use that ground in relation to established traders?

Yes we will intend to continue to use this ground. As the temporary trader will be operating under a 'pedlar' definition we would prefer to maintain the ground for temporary traders, particularly given our experience of the nature of users of 'Pedlars Certificates'.

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, you will be creating a differentiated series of grounds for different traders, which is simply adding complications to this legislation.**

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 (see paragraphs 1.51 – 1.53)

Let local Authorities determine local arrangements.

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)

No – we support it.

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

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).

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;
Our response will be provided by Alastair Lewis of Sharpe Pritchard
- (ii) if such amendments/ repeals are needed whether you wish us to include them in our regulations.
- (iii) **Our response will be provided by Alastair Lewis of Sharpe Pritchard**

Question 16: Please can local authorities tell us-

Our response will be provided by Alastair Lewis of Sharpe Pritchard

- (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.

Question 17: Can local authorities tell us-

Our response will be provided by Alastair Lewis of Sharpe Pritchard

- (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)?