



## **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:

Organisation (if applicable):

Address:

Please return completed forms to:

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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:**

There is overall acceptance that the current legislation is unsound however the proposals put forward in the BIS consultation reduce consumer protection in being able to trace a pedlar for redress in cases of problems and will lead to problems in managing pedlars within a town centre setting at a time of Local Government cut backs when there are no resources to monitor and control pedlar compliance with the restrictions proposed in this consultation.

Newcastle Borough Council supports the stance set out by NABMA in its letter of 4<sup>th</sup> March 2013 on this issue.

**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**

- 1) Local Government and Town Centre Partnerships  
The proposal reduces the ability of Local Government and Town Centre Partnerships to manage activity within their town centres. The consultation does not make it clear what penalties could be applied by whom if pedlars don't act in accordance with the proposed definition.

2) Any market operator  
The proposals will lead to unfair competition and the lack of a level playing field for market / street traders who are required to pay 'pitch' or 'stall' fees

and produce evidence of suitable public liability insurance.

3) All Market Traders and Street Traders who pay a stall or pitch fee to trade in a town centre. The risk is that a mobile market will set up in direct competition to long established street markets.

4) Could you clarify how a consumer who buys from a pedlar would seek recourse through normal consumer protection laws in the event of a problem?

5) Additionally, could you clarify how trading standards might track a pedlar selling counterfeit goods if there is no requirement for a pedlar to register anywhere?

**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:**

The size of the receptacle proposed is too large. In some cases pedlars would be equipped to carry more stock than static market traders.

In smaller town centres where for pedestrian safety reasons few streets are labelled as consent streets a pedlar may only be able to stop 2 or 3 times before leaving the town. Experience in our town centre is that once situated in a town pedlars prefer to stay for a number of hours. It is highly unlikely that pedlars would waste valuable trading time by travelling between town centres on one trading day. The proposals put pedlars more at risk of contravening regulations than complying with them. As an example our town centre consent area is approximately 230 metres long, a pedlar would only be able to stop 4 times before leaving. Use of any other area would put pedestrians at risk of conflict with passing vehicular traffic and the remaining pedestrianised area of the town is a designated market area.

Monitoring of activity will be very time intensive at a time when there is reduced staffing and resource in Local Government, increasing the potential for contravention of the requirements.

**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:**

All applicants should however be able to comply with application requirements.

**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:**

Subject to persons aged under 17 being able to get suitable insurance for their activities this proposal encourages entrepreneurship at a young age with all the potential benefits that this brings.

**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:**

I am able to confirm that in the last three years we received one trading enquiry from a person aged under 17, unless it was within a specific scheme such as Young Enterprise.

**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:**

Many smaller town centres are struggling and long established retailers and traders are struggling to make a living profit. The introduction of short term competition could lead to further retail closures and increase town centre vacancy rates, this seems contrary to the Portas town centre revitalisation drive. One element of maintaining retail attractiveness is variety, if a number of street traders chose to specialise in the same goods this would erode the overall attractiveness of smaller town centres, particularly if it eroded the business base of existing traders and the short term street traders then chose to move on to a new town once pre-existing businesses have closed.



**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 contents of Para 1.38 seem to suggest that such a refusal ground if it were included would be drafted in such broad terms as to make it unusable. Further clarity is required on the reason for and scope of this proposal.

**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:**

Please refer to response to 7.1.

**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:**

Please refer to response to 7.1

**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:**

Newcastle Borough Council does not specify this restriction in its street trading conditions. Whilst accepting that temporary traders may have greater travel demands, we would question removal of these grounds where there is demand from other traders to use that space.

**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:**

If this is not done then the risk becomes that street trading pitches stand empty and new applicants are prevented from taking up the opportunity to trade.

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

☐ Yes

☐ No

**Comments:**

Newcastle Borough Council does not specify this restriction in its street trading conditions.

**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:**

Newcastle Borough Council has no objection to what is being proposed.

**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:**

Newcastle Borough Council has no objection to what is being proposed

**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:**

**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:**

A flexible approach would assist local authorities in determining individual needs within their local authority area.

**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:**

Newcastle Borough Council is unable to specify at this time.

**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:**

BIS should consider the implications of trader attendance eroding over time. Local Authorities should retain the right to challenge any trader who does not avail himself of a licence to a reasonable extent. Where there is demand from other traders for that space surely Local Authorities should retain the right to require attendance within a reasonable (specified) amount of time or withdraw the right to trade in that location. Where a temporary trader applied for a licence clearly there was an intent to commit to that location for the specified number of days, circumstances change, if the temporary trader was sufficiently able to apply for the licence in the first place isn't there a related

obligation to inform a Local Authority of any difficulties that occur with that commitment?

**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:**

**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:**

**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:**

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**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:**

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**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:**

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**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:**

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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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