



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 **15th March 2013**

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Tel: 020 7 215 5898
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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
✓	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:

In principal yes. However, it is the opinion of this Licensing Authority that the Pedlars Act no longer truly reflects the manner in which modern day street vendors operate. It is understood that the current regime is not considered compliant with European Legislation. We feel that a more prescriptive definition of what constitutes 'pedlary' would help remove the perceived ambiguity that surrounds this activity.

This Authority has serious reservations about whether losing the requirement for prospective pedlars to register with an authority, be it the Police or a Local Authority, will make it difficult to contact individuals. It is considered vital for there to be a level of traceability of the individuals concerned if, for instance, there is an issue regarding their conduct, quality/safety of products or a Licensing Authority or another partner agency (such as Trading Standards of UKBA) wishes to instigate formal action against the individual concerned.

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 the view of this Authority that high street retailers and permanent market traders (those operating under a bona fide Street Trading Consent) fear being adversely impacted by the proposed changes. It is believed deregulation may lead to increased numbers of pedlars selling similar goods or operating in close proximity to their premises. This may result in both a nuisance and present a physical barrier to customers.

The proposals do not allow for any legal mechanism to control numbers and it is understood that any such provision would contravene the European Directive. Therefore, market forces will be the predominant factor in regulating numbers, but solely relying upon economic forces could result in periods where there are too many pedlars operating in the same location at the same time, which from a safety and economic perspective may not be desirable. It is felt that any safety concerns must overrule the ability to control the presence of pedlars.

During the consultation process this Authority liaised with various interested parties and there appears to be an activity amongst 'local' and 'regular' pedlars that when faced with external competition from others (particularly during events or at certain times of the year) they have been known to increase the number of stalls and product availability/range to compete and in essence to prevent "others from coming in". This was described as "*local mafias*".

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:

In principle, the proposed new definition for pedlars provides a clear set of parameters for both pedlars and enforcing agencies alike. However the proposed distances in the draft definition are too great and it may be worthwhile considering restricting these further.

However, it is questionable as to whether the proposed changes would assist in reducing the officer time and cost associated with taking enforcement action against a pedlar. Checking trolley sizes, pedlars movements and the length of time a pedlar remains stationary is very staff resource intensive and financially expensive.

The last prosecution sort by this Licensing Authority against a pedlar was in 2008. Although successful the fines awarded by the Magistrates were negligible as it was perceived as a victimless crime. Consequently, the individuals convicted returned the following day to commit the exact same offences, so the fines did not act as a sufficient deterrent. Legal advice at the time stated found it was not in the public interest to undertake similar action again. This remains the case.

Giving Officers the power to issue Fixed Penalty Notices in respect of any offences committed would seem a far more efficient way of dealing with any transgressions committed by pedlars. There must be a sufficient deterrent or cumulative impact on a pedlar to prevent them from acting illegally. There has been no mention of potentially using the Proceeds of Crime Act.

Powers for appropriate authorised officers to seize a stall would assist with tackling repeat offenders.

In addition the wording of Sub-Para 2D of Para 1, Part 3 is questionable, which states the trader must not return within 3 hours to their original location or a location within 50 metres of that location. This could conceivably mean that the pedlars could work in groups or employ someone else to work their stall to circumvent this provision. If the regulation was reworded to include 'the pedlar **and any person** working in conjunction with him/her' then that may close a potential loop-hole. As referred to above the distance suggested in the proposed definition are too large and consideration could be given to further restricting these.

This Licensing Authority also has serious safety concerns associated with the proposed dimension of a stall both to the stall holder and members of the public.

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:

This Licensing Authority has designated certain pedestrianized streets in the City Centre as 'Consent Streets'. Street trading is prohibited in the remaining streets within the City Centre. This Authority does not issue Street Trading Licences, so are not able to comment on the majority of questions posed that relate to Street Trading Licences. Some comments have been offered in respect of questions which also could impact upon Street Trading Consents.

Safety must be a fundamental consideration when determining a Street Trading Licence.

Question 4: Do you agree that only one photo needs to be submitted with street trading applications which are made electronically?

☒ Yes ☐ No

Comments:

Helping to reduce the burden upon the 'applicant' can only be of help however there is no suggestion of providing other document evidence to support/evidence that the individual applying is in fact the correct person when this is done electronically. It is important, as previously stated, that traceability of the applicant is possible and/or those supporting an application.

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:

A comment was made to this Licensing Authority that the minimum age should in fact be raised to 18 rather than 17 which was considered too low. No evidence was provided to support this argument.

There is also a concern with operators potentially employing minors to work their stalls and what are the repercussions for enforcing authorities considering instigating legal action against a minor?

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:

No comment

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:

It must be appreciated that political pressures vary between Licensing Authorities as to the level of action, if any, taken in relation to pedlars particularly in these times of austerity. Undoubtedly discretion to refuse/approve applications should be allowed to reflect local and differing circumstances. Part of this consideration and discretionary decision making powers should include controls in-order to maintain control over the spirit/appearance and variety of products/goods available dependent on the local characteristics of a specific area.

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:

No comment.

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:

No comment.

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:

No comment.

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:

No comment.

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:

No comment.

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:

No Comment.

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

☐ Yes

☐ No

Comments:

No Comment.

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:

No Comment.

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:

No Comment.

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:

No Comment.

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 comment.

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:

No comment.

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:

No comment.

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:

No comment.

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:

No comment.

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:

No comment.

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:

No comment.

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:

No comment.

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:

The proposed changes to the Regulations which relate to Street Trading Consents are not anticipated to have any major impact upon how the regimes is administered and enforced presently.

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

☐ Yes

☒ No

Comments:

No comment.

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:

This Licensing Authority is not aware of any other Local Acts that are not captured in Annex B or any Acts listed in that Annex that have been repealed already. We did communicate with West Sussex County Council regarding this matter to ensure their relevant department was aware of the consultation.

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:

(i) The Policy Guidelines, set by our elected members, regarding how we administer and enforce Street Trading Consents will need to be reviewed to ensure compliance with the Directive.

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 local Acts relevant to this Authority are listed in Annex C and it is not believed that there are any other local Acts that would be affected by the repeal of the Pedlars Acts.

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:

Not applicable.

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 intimated in the answer at Question 6 there must be local discretion afforded to Licensing Authorities in the decision making process to protect the many varying locations at which pedlars typically operate. In particular it is vital that the protection of sites of special/significant historical buildings/monuments and listed buildings is a consideration.

There didn't appear to be any reference to the existence of public liability insurance or any form of insurance that should be held by a pedlar when undertaking their activities. Is this a consideration, particularly based on the proposed dimensions of a stall?

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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