



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): Newcastle City Council

Address: Civic Centre, Barras Bridge, Newcastle upon Tyne, NE99 2BN

Please return completed forms to:

Name: Rachel Onikosi, Policy Manager

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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
<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 X No

Comments:

The Council does not see why the Act needs to be repealed in whole and questions whether the Act could not simply be amended to comply with the Directive. The Council would expect the police to retain a power to ensure pedlars are fit and proper persons and that they have been adequately vetted by the police.

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

Retail outlets will be affected along with markets and other street traders due to the proliferation of further traders on the street which will have lower operating costs than others.

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 Council brought in the City of Newcastle Act 2000 to prohibit pedlars in the city save for door to door pedalling. Prior to the Newcastle Act, there was a proliferation of pedlars in the city which caused nuisance, annoyance and obstruction within the city and complaints regarding products sold by pedlars with no recourse to the consumer in respect of faulty/ substandard products.

The proposed definition would revert to the situation described above.

The Council believes that the new definition is unenforceable. The Council feels that the definition proposed is complicated and would be confusing for pedlars and would cause difficulties for enforcements officers in terms of interpretation and resources. For example, how would the Council enforce a provision whereby pedlars are not allowed to return to within 50 metres of the same location where they have previously been in the last three hours? Would enforcement officers be expected to carry out measurements in busy city centre streets? As without having to resort to this sort of extreme, the provision would undoubtedly be regularly challenged by pedlars and their legal representatives.

The Council fears that the relaxation of the definition would flood the high street with pedlars at a time when existing businesses are struggling.

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?

X Yes

☐ No

Comments:

To afford the licensing authority control over traders in the city to ensure a diverse shopping experience for the consumer.

Question 4:

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

X Yes

☐ No

Comments:

The Council has no issue with this.

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

X No

Comments:

The minimum age requirement provides additional protection from child exploitation. The Council would have concerns about child pedlars operating alone, particularly in the night time economy and feel that they would be vulnerable to theft and assault.

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:

The Council cannot give such an indication, impossible to say.

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).

X Yes

☐ No

Comments:

Although the Council does not have any problems in the enforcement of these provisions at present.

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).

X Yes

☐ No

Comments:

The Council believes that retaining the provisions of 3(6)(b) would protect consumers and does not solely protect competitors. This would be done by protecting for consumers the diversity of shopping areas and the goods in which they trade. For example, the Council envisages a situation where a street could become flooded with pedlars offering low quality similar goods to each other which would be detrimental to the amenity of the area.

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)

X Yes

☐ No

Comments:

Only if paragraph 3(6)(b) was repealed. However, the Council would prefer to retain the existing provisions.

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:

The Council would seek to protect the amenity of areas using such a ground. It is difficult to say how often this ground would be used or the costs associated with it.

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

X Yes

☐ No

Comments:

If such grounds were introduced.

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:

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:

The Council would prefer the proposed approach top be pursued rather than repeal of the grounds completely.

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

☒ Yes

☐ No

Comments:

The Council has high demand for established street trading sites and therefore the provision is necessary to ensure use of the sites.

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:

The Council believes that existing traders would have concern in respect of the repeal of this provision.

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:

Impossible to say.

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:

Lengthening the duration of licences would be likely to have a negative effect in the ability for new traders to obtain licences, given the restricted numbers of sites available in the city.

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:

Unknown at present.

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)

X Yes

☐ No

Comments:

In the event of repeal of existing provisions this would be helpful.

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?

X Yes

☐ No

Comments:

The Council does not see a distinction between established traders and temporary traders, both could be licensed for a particular period of time and fail to use their licence sufficiently during within those periods. Even application of the ground should be used for both types of 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

X No

(ii) Will local authorities continue to use that ground in relation to established traders?

X Yes

☐ No

Comments:

The Council believes that the provision can be used in respect of both types of 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?

X Yes

☐ No

Comments:

The Council does not feel it is necessary to limit the circumstances.

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

X 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

X 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

X No

Comments:

Paragraph 8 gives the power to permit such trading at the discretion of the local authority.

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

☐ Yes

X 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:

None

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:

We have screened sections 4 and 5 of the City of Newcastle upon Tyne Act 2000 for compliance with the Directive and do not consider that any amendments or repeals are needed.

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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:

It will be necessary to amend section 4 of the City of Newcastle upon Tyne Act 2000 as a consequence of the proposed repeal of the Pedlars Acts. The attached document sets out (1) how section 4 should read following the amendments and (2) wording for the regulations that achieves that intention.

Section 4 restricts the pedlar exemption in the 1982 Act to house to house trading. The proposed amendments seek to maintain that provision. It seeks to achieve that by amending your proposed amendments in paragraph 4 of the draft regulations.

It amends the definition of pedlar in the proposed paragraph (2A) of schedule 4 (as inserted by the draft regulations) by confining it just to house to house trading.

It amends paragraph (2D) of schedule 4 (as inserted by the draft regulations) so that the restrictions apply only to house to house trading.

It omits paragraphs (2C) and (2E) of schedule 4 (as inserted by the draft regulations) since these provisions are not applicable to house to house trading.

It retains paragraphs (2B) (2F) and (2G) of schedule 4 (as inserted by the draft regulations) without any change. The provisions about carrying the articles, the measurement of distance, and the inclusion of living things within the definition of the type of articles that can be sold are equally applicable to

house to house trading.

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 further amendments are required other than those referred to in response to Question 16.

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:

Prior to the City of Newcastle upon Tyne Act 2000, our city had major issues with traders operating under the auspices of pedlar certificates blatantly flouting the expectations associated with that permit. This led to a proliferation of complaints from members of the public clearly deterred from

shopping in the city and also from the established retail outlets whose businesses were unfairly affected. The enforcement procedures needed to deal with this illegal activity was burdensome, time consuming, and extremely expensive for the local authority and the court system. The "Newcastle Act" has helped immeasurably with dealing with these problems. The relaxation of pedlar control would lead to the inevitable return of unwanted trading in the city and the problems associated with it. The proposed definition change to the Local Government (Miscellaneous Provisions) Act 1982 would render local authorities helpless in the control of itinerant traders as the suggested changes would be unenforceable. Newcastle along with other destination cities are seen as honey pots for trading activity and a relaxation of current legislation would see a return of illegal traders and pedlars of dubious criminal history (if the repeal of the fit and proper person test is removed) to swamp the city centre with the inevitable result of shoppers leaving the city to shop in private malls. City and town centres around the country need a helping hand to try and invigorate trade at present, not a provision which would deter shoppers by filling their every step with traders selling unwanted low grade and sometimes dangerous products. We strongly believe the proposals by BIS fail to recognise the inevitable effects this legislative change will cause.

Clearly the residency issue is not compliant with the Services Directive but to remove the fit and proper test will allow the most vulnerable people to be at the mercy of the unscrupulous when faced with door step traders. The removal in totality of Pedlar legislation will also render local acts ineffective. The fact that Newcastle, Westminster, Liverpool along with many other councils have gone to the time and expense of private legislation to control pedlars surely highlights to BIS that there are major concerns with street trading and particularly with pedlars.

The Government is currently looking at scrap metal legislation which will increase control by the Environment Agency and Local Authorities with an aim to protect those vulnerable to illegal door step activity. I see no reason why pedlar control is therefore being relaxed. This conflict of approach to door step trade appears confusing and shows a lack of direction by the Government. The recent success of the Olympic Games and the specific legislation to have zones of control (where pedlars were banned) to protect the Olympic Brand also seems contradictory to the current BIS proposals. The High Street is a brand which clearly needs protecting at this time where retailers are demonstrably struggling. Newcastle City Council strongly urge BIS to ensure further thought is given to the issues and that the current proposals will result in a preponderance of street trading which will flood our high streets if these proposals are adopted as they stand.

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?

x Yes

☐ No

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