



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:

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 ---- Yes Cambridge City Council

<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 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:

Yes - we can appreciate the need to repeal the 1871 and 1881 Pedlars Act but if this were to proceed we do not agree with the proposal that Pedlars should then be exempt from current street trading legislation. We believe that pedlars should also be subject to regulation under the **Schedule 4 to the LG(MP)A**

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

Yes - it is our view that the repeal without any other form of regulation could significantly disadvantage a number of organisations/ individuals/groups:

licensed street traders – The revised definition of the exemption for pedlars in Schedule 4 to the LG(MP)A is so broad and generous that it would undermine existing licensed street traders who pay an annual fee for their pitches; some of the units used currently by our street traders units are not dissimilar to the dimensions quoted in the proposals for the units that pedlars would be able to use to transport their stock. In addition they are not much

larger than the dimensions of some of our market stalls.

Other retailers including Market traders – Essentially the proposals would give pedlars a significant advantage over other retailers, market traders and street traders, all of whom have regulation that sets out how and where they can trade. It is worth of note that all these businesses pay premises costs at various levels and therefore Pedlars would be at a significant advantage under these proposals. This would be unfair competition.

The general public - An area of significant concern with these proposals is the complete lack of lack of consumer protection that they offer members of the public who are purchasing items from pedlars. Pedlars are by nature transient and if they were un regulated as these proposal propose, they would also be completely unaccountable.

This is in direct conflict with the apparent commitment from the EU and the UK parliament to increase consumer protection.

- there is nothing in the proposals that gives local authorities the ability to limit the number of pedlars permitted to trade in any one area at any particular time. In historic cities like Cambridge where many streets are narrow and become congested in the height of the tourist season, this could result in real problems with accessibility and subsequent health and safety issues.

This could impact on people's experience of using towns and cities centres and therefore in turn further challenge the vitality and viability of some high streets at a time when they are competing with the convenience of the internet and out of town shopping.

Local authorities – The exemption as it is currently drafted would mean that illegal street trading would become virtually unenforceable. Additional pressure would be exerted on already stretched and reduced Local authority resources in areas such as enforcement and legal. Cambridgeshire constabulary have expressed similar concerns in terms of increased requests from the general public to respond to reports of illegal street trading from members of the public and local businesses.

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:

No – The dimensions of the receptacle that it is proposed that pedlars would be permitted to use is far too large. Because of this the proposals would give pedlars a significant advantage over other traders. It would not be a fair and a level playing field. The existing legislation says that pedlars must carry their wares. If this is now considered to be non compliant with the European Services Directive then it would seem fair and appropriate to limit the size of the receptacle to no larger than that which could be carried. This could still permit the unit to be wheeled but would not give a pedlar an unfair advantage over other static traders such as market traders and licensed street traders

The 10 minute rule as it is currently proposed would make it too easy for pedlars to manipulate the situation and create an artificial audience to justify not moving on after 10 minutes. This would prove almost unenforceable as Local Authorities and the Police will not have sufficient resource to monitor and evidence breaches on this element of the exemption definition.

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:

No this would not be an issue

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

☐ Yes ☐ No

Comments:

Yes this would not be is no problem

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:

Yes. We do not anticipate that this would be an area of concern for us.

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:

We have no evidence to date of receiving applications from individuals aged under 17.

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:

(a) Insufficient space, (d) applicant’s suitability, (e) and (f) failure to pay fees/charges- These discretionary grounds are considered in the proposals to be compatible wit the Directive

Yes we would consider it useful if BIS issued guidance on how these might be applied when assessing applications.

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:

We are concerned about this proposal as it limits the ability of local authorities to ensure a diverse retail mix with a varied offer of choice and quality.

If this same restriction were extended to local authorities in the way in which they manage their markets we would have real concern. Whilst we accept that market forces should play a part in determining the offer on a market, our concerns would be that to remove the ability for Local authorities to develop a diverse and varied offer, this could put the future of markets as we have today at significant risk and there is a likelihood of a growth in single commodity/ specialist markets.

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:

This would enable a LA to refuse a license if they are of the view that the street is unsuitable for the trading in which the applicant desires to trade.

Yes we consider that this could be useful

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:

To respond to this we would need to be clear on what grounds would be compatible with the Directive e.g.

If the commodities sold in a particular street were in such a high proportion that permitting additional street trading in this area could reduce choice and diversity further (risk of further Cloning of streets) . The challenge is that this could be difficult to evidence so clear criteria would need to be issued by BIS

Not sure what costs would be incurred as if the guidance and criteria were clearly defined it would be difficult to see legal challenges occurring.

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:

Yes as set out above

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:

Para 3(6) c applicant wants to trade too few days a week and 3(6) g- applicant has failed to use previous license sufficiently

We would not propose to treat “temporary traders” differently to “established Traders”

We would suggest that these grounds could be used compatibly with the Directive with both temporary traders and established traders where demand for street trading pitches clearly exceeds supply.

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:

We would not support repealing these grounds completely because in Cambridge, where demand currently exceeds supply, we consider it reasonable grounds to refuse a consent if it is not been used sufficiently or an applicant wishes to trade too few days a week. Where this is not the case we would not refuse consent on these grounds.

We would apply this ground irrespective of whether a trader was an established or temporary trader.

Yes in the circumstances as set out above

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

☐ Yes

☐ No

Comments:

Yes see above

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

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:

N/A as we do not have any local Acts for 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?

☐ Yes

☐ No

Comments:

N/A

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

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:

See response to Q10 above

Currently in Cambridge where demand exceeds supply, lengthening the duration of licenses could be perceived as a barrier to new traders. However if in developing new pitches this is balanced out in the future we can appreciate the merit in the flexibility to issue consents for longer periods to provide street traders with some increased security.

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:

Initially No.

In Cambridge we issue consents for Street Trading which have historically been automatically renewed each year if there were no cause for concerns with the existing trader and they were fully compliant with any legislation appropriate to their activity.. In 2012 we undertook a thorough review of our

street trading policy following criticism from prospective street traders that Cambridge was operating a “Pitch for Life” policy. The new policy has introduced a much more robust annual application process and annual checks to ensure good practise and compliance with appropriate legislation. A more detailed review is then undertaken every 3 years. We are also in the process of creating new pitches to try to respond to the demand.

As we have more demand than supply we would not propose to extend consents for more than 12 month in the first instance if this proposed change in legislation were to be approved. However we may review this situation in time so it would be helpful to have the flexibility within the legislation do so.

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:

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?

☐ Yes

☐ No

Comments:

5 (1) d- Failure to use license sufficiently –

In Cambridge, where demand currently exceeds supply, we consider it reasonable grounds to revoke consent if it is not been used sufficiently. Where this is not the case we would not revoke consent on these grounds.

We would apply this ground irrespective of whether a trader was an established or temporary trader.

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:

We would apply this ground irrespective of whether a trader was an established or temporary trader as long as we have the situation where demand exceeds supply.

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 see responses above

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:

NA as we only issue consents

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:

No

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

☐ Yes

☐ No

Comments:

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).

Comments:

N/A

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:

N/A

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:

N/A

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:

N/A

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:

Please see covering letter, which summarises our key areas of concern with these proposals.

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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