Department for Business, Innovation & Skills

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 February 2013.**

[redacted]
Organisation (if applicable): Derbyshire Constabulary
Address Butterley Hall, Ripley, Derbyshire, DE5 3RS

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.

X ☐	Business representative organisation/trade body
☐	Central government

☐	Charity or social enterprise
☐	Individual
☐	Large business (over 250 staff)
☐	Legal representative
☐	Local Government
☐	Medium business (50 to 250 staff)
☐	Micro business (up to 9 staff)
☐	Small business (10 to 49 staff)
☐	Trade union or staff association
X☐	Derbyshire Constabulary

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:

It is accepted that the Pedlar Act is generally outdated and the definition of a Pedlar should be updated to reflect modern day trading.

It is not agreed that the Pedlar Act should be repealed totally. A total repeal may result in an increase in rogue and unwelcomed traders creating issues around enforcement and management of Pedlars.

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:

The Grade C Clerical Officer will initially process the application. The various sections of this process amounts to approximately 45minutes to 1hours work however, should the applicant be illiterate then assistance has been provided

in completing the form which could be up to an extra 20 mins.

An Officer of Inspector rank will carry out various system checks which are then followed up by a home visit to complete the remainder of the form with the applicant.

A Superintendent or Divisional Commander will then review the application to approve/disapprove certificate. This stage of the process can take five minutes or much more depending on content and history of applicant.

On average 50-60 applications are received each year by the Constabulary.

It is difficult to state the actual cost of whole administration and management of the process.

Repeal would have no cost implications other than a small financial saving in relation to the administration, the repeal may however result in increased resourcing costs of managing illegal street traders.

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

A repeal or transfer of the certificate would be costly for Local Authorities. Costs are absorbed currently by Police who are able to manage the administration and checks swiftly.

Despite the fact the Pedlar Certificate process could be consolidated with the Street Trading applications there will be further cost implications for councils to build in an additional new process.

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?**

x☐ Yes ☐ No

Please fully explain your reasons for agreeing or disagreeing with any element of the proposed definition.

Comments:

Agree with the proposed definition that a pedlar trades only on foot and that he is limited to the size of the receptacle thereby avoiding any obstruction issues.

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:

N/A

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

☐ Yes X☐ No

Comments:

The necessity for a photograph has only been adopted very recently in Derbyshire. A decision to request two photographs was reached to prevent and detect fraudulent usage of the Certificate.

Pedlar Applications in Derbyshire are where possible submitted in person for verification via hard copy.

Two photos are requested, a certificate copy and police file copy.

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).**

x☐ Yes ☐ No

Comments:

1933 Children Act prohibits a child being employed in street trading. A child by definition of this Act is a person who is not over the compulsory school age.

A child at the age of 16 is legally able to seek full time employment. The requirement under the Pedlar Act for applicant to be 17yrs appears to be unjustified.

Legally envisage no reasons why a person aged 16 may not hold a Pedlars Certificate.

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:

N/A

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:

Currently the authority for refusal of Pedlar Certificate is devolved to a Superintendent or a rank above who is required to ensure that all the requirements of the Act are met.
Further guidance would be appreciated in relation to Article 16 to assist with decision making and justification in cases where a certificate is not approved.

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 x☐ No

Comments:

Due to the small number of applicants in Derbyshire 3(6)(b) is unlikely to become an issue.

Agree that it can not be used compatibly with Article 14 (5) which involves a case-by-case assessment of the existence of an economic need or market demand.

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:

A police assessment would essentially be based on the applicants character and criminal history.

Such additional 'Suitability' grounds are more helpful to an Authority/Council' making an assessment.

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:

N/A

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:

Again, maybe useful for Local Authorities.

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 x☐ No

Comments:

Currently there is no requirement for a Pedlar to show he/she has used their certificate sufficiently. The question is more relevant to street traders and Authorities.

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:

NA

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

☐ Yes ☐ No

Comments:

N/A

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:

N/A

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 x☐ No

Comments:

No the LGMPA is intended to be inclusive of the Member States and therefore any act that is likely to constitute indirect discrimination should be removed.

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?**

x☐ Yes ☐ No

Comments:

As above.

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 x☐ No

Comments:

No reason why the Authority cannot have the discretion to issue for longer that 12 months

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:

N/A

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:

N/A

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:

N/A

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:

N/A

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:

N/A

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:

N/A

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:

N/A

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:

N/A

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

☐ Yes ☐ No

Comments:

N/A

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 <u>any other provisions</u> 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:

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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