

**TO: LICENSING AND SAFETY COMMITTEE  
10 JANUARY 2013**

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**BIS CONSULTATION ON STREET TRADING AND PEDLARY LAWS  
Director of Environment, Culture and Communities**

**1 INTRODUCTION**

- 1.1 The purpose of this report is to bring to the Committee for approval a draft response to a consultation on draft regulations to repeal the Pedlars Act and change street trading legislation.

**2 RECOMMENDATION**

- 2.1 **That the Committee considers the draft response at Annex A, and subject to any amendments confirms the response of the Committee.**

**3 REASONS FOR RECOMMENDATION**

- 3.1 The draft regulations if introduced will impact on the authorisation process for street traders carried out by the Council.

**4 ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 The Committee can amend the draft response at Annex A. There is no obligation to respond to the proposals.

**5 SUPPORTING INFORMATION**

- 5.1 The Department of Business, Innovation and Skills has released a joint consultation on draft regulations to repeal the Pedlars Acts 1871 and 1881 and to amend street trading legislation to secure compliance with the European Services Directive. The primary aim of the European Services Directive is to make it easier for service businesses to set up or sell their services anywhere in the European Union. The retail sale of goods is a service activity within the scope of the Directive.
- 5.2 In order for an authorisation scheme (such as the pedlars' certification regime or the street trading licensing regime) to be justified, the requirements of Articles 9 and 16 of the Directive must be met. In general, this means that the authorisation scheme must be non-discriminatory, necessary and proportionate.
- 5.3 It is the view of Government that the Pedlars Acts 1871 and 1881 do not comply with these Articles and are burdensome on both pedlars and the Police (who administer the scheme of authorising pedlars) and therefore the regime would be abolished and a more precise definition of what behaviour constitutes acting as a pedlar would be inserted into the pedlar exemption from the street trading legislation. This would include a definition of the maximum size of any receptacle used by the pedlar to carry his goods, a maximum amount of time that a trader can remain static, and requirements to keep the pedlar trading while on the move.
- 5.4 There is also a proposal to amend street trader legislation in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 in relation to the designation of streets, the discretionary and mandatory grounds for refusing or revoking a street trading consent, and the maximum duration of a consent.

## Unrestricted

- 5.5 The Council currently designates all highway and land within 150 metres of the highway as consent streets for the purposes of street trading, meaning a street trading consent is required to trade in those locations. The consultation proposes to amend the Council's designation power so that in addition to the power to designate a street as a consent street for all traders, there would be a power to designate a street as a consent street for permanent traders only, which would enable temporary traders to trade on the street without an authorisation.
- 5.6 The consultation also proposes a provision to enable consents to be granted for longer than the current maximum of 12 months, for either a longer period or indefinitely.
- 5.7 Another key proposal is the removal of the mandatory grounds to refuse a consent on the basis of a minimum age, as it is felt there is already sufficient protection for children under Part II of the Children and Young Persons Act 1933.
- 5.8 The consultation states that BIS will also be looking to give more effective enforcement powers to local authorities in order to help them enforce the reformed street trading and pedlary regime more robustly, whilst respecting the free market provisions of the Directive and defending the business interests of legitimate pedlars and street traders
- 5.9 The consultation closes on Friday 15 February 2013.

## **6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS**

### Borough Solicitor

- 6.1 The legal implications are identified within the report.

### Borough Treasurer

- 6.2 There are no significant financial implications arising from the recommendation in this report.

### Equalities Impact Assessment

- 6.3 There are no implications arising from the recommendation in this report.

### Strategic Risk Management Issues

- 6.4 There are no implications arising from the recommendation in this report.

## **7 CONSULTATION**

### Principal Groups Consulted

- 7.1 The BIS consultation is an open public consultation.

### Method of Consultation

- 7.2 The consultation can be found at <http://bis.gov.uk/Consultations/street-trading-pedlary-laws>.

### Representations Received

- 7.3 Not applicable.

Unrestricted

Background Papers

BIS Consultation: Street Trading and Pedlary Laws – Compliance with the European Services Directive

<http://bis.gov.uk/Consultations/street-trading-pedlary-laws>

Contact for further information

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**Draft response to street trading and pedlary laws consultation**

**Q1: Do you agree with the proposed repeal of the Pedlars Acts 1871 and 1881 UK-wide?**

Yes  No

**Comments:**

*There are currently many persons who abuse the system of pedlary and most of those persons operating within this area under a pedlar certificate are to all intents and purposes street traders who wish to avoid making an application for a street trading consent.*

**Q2: 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 particular, the requirement for a pedlar to keep on the move is key. The proposed size of the receptacle to carry goods seems rather large and we would not want these dimensions to increase.*

**Q3: 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:**

*None*

**Q4: Do you agree that only one photo needs to be submitted with street trading applications which are made electronically?**

Yes  No

**Comments:**

*None*

**Q5: 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:**

*None*

**Q5.1: 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:**

*None*

**Q6: 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:**

*None*

**Q7: 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:**

*None*

**Q7.1: 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:**

*There may be occasions on which a street may be deemed as unsuitable for traders due to, for example, ongoing street works.*

**Q7.2: In relation to this new ground, can you tell us:**

**(i) In what circumstances you would use this ground and how often?**

*There may be occasions on which a street may be deemed as unsuitable for traders due to, for example, ongoing street works.*

**(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:**

*None*

**Q7.3: Would it be helpful for BIS to issue guidance on the circumstances in which this replacement ground could be used?**

Yes  No

**Comments:**

*None*

**Q8: 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:**

*None*

**Q8:1: 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:**

*None*

**Q8.2: Will local authorities continue to use these grounds in relation to established traders?**

Yes  No

**Comments:**

*This approach could be justified if there are other persons wishing to trade in the same areas on a greater number of days each week than the number for which the applicant wishes to trade.*

**Q8.3: 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:**

*None*

**Q9: 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:**

*None*

**Q9.1: 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:**

*None*

**Q10: 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:**

*None*

**If you are a local authority can you further tell us**

**Q10.1: 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?**

**Comments:**

*Neutral impact provided we retain a level of control in respect of authorisations to trade in the street.*

**Q10.2:**

**(i) Whether you are likely to issue licences for more than a 12 month period of indefinitely?**

**(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:**

*It is not known whether there will be demand for this, but this can be considered by the Council in due course.*

**Q11: 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:**

*None*

**Q11.1: 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:**

*None*



**Q11.2: (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:**

*This approach could be justified if there are other persons wishing to trade in the same areas on a greater number of days each week than the number for which the applicant wishes to trade.*

**Q11.3: 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:**

*None*

**Q12: 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

*None*

**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:**

*None*

**Q13: 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:**

*None*

**Q14: Do you foresee any problems with our proposals to amend paragraph 10(1)(d)? (See paragraph 1.59)**

Yes

No

**Comments:**

*None*

**Q15: 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:**

*Not applicable*

**Q15.1: 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:**

*Not applicable*

**Q16: 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:**

*Not applicable*

**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*