

Report of The Head of Planning and Local Development

Notification of Urgent Action – Consultation on Street Trading and Pedlary Laws

1 Purpose of report

To advise Members of Urgent Action taken by the Chairman of Development Committee on 14 March 2013 pursuant to delegated powers to allow a response to the Consultation on Street Trading and Pedlary Laws..

2 Executive summary

Urgent Action was taken by the Chairman of Development Committee to submit a response to the Department for Business Innovation and Skills' consultation on Street Trading and Pedlary Laws – Compliance with the requirements of the European Services Directive.

3 Appendices

Appendix 1 Request for Urgent Action Form

Appendix 2 BCW response to BIS consultation on Street Trading and Pedlary Laws

4 Proposed action:

4.1 Members RESOLVE to note the Urgent Action taken by the Chairman of Development Committee in consultation with the Leader of the Council.

5 Background

5.1 The Department for Business Innovation and Skills issued a consultation on Street Trading and Pedlary Laws – Compliance with the requirements of the European Services Directive.

5.2 There could be significant implications for established traders, existing retailers and the general public if the proposals are implemented as stated in the consultation documents.

6 Discussion

6.1 The repeal of the act could have a significant impact upon:

- (a) Retailers – who could realistically have pedlars in the same products as they sell setting up directly outside their premises.
- (b) Other fee-paying, legislation compliant street traders, who have been

- ‘vetted’ and have purchased the appropriate public liability insurance.
- (c) General public shopping in the High Street – whose consumer rights could be affected as they would have no guarantee that the goods they buy are of a safe standard or could be returned if faulty.
- (d) People in their own homes, who could see an increase of people arriving at their home to sell their goods – perhaps acting as the perfect foil for potential burglars to ‘inspect’ people’s homes.

6.2 It was felt necessary that the Council express its concerns at the possible implications if the proposals are implemented as contained within the documentation issued.

7 Legal powers

Local Government (Miscellaneous Provisions) Act 1982

8 Financial and value for money implications

There could be significant financial implications if the BIS proposals are implemented.

9 Risk analysis

Nature of risk	Consequences if realised	Likelihood of occurrence	Control measures
BIS proposals are implemented as stated in the consultation documents.	Detrimental effect on established traders, existing retailers, shoppers in the high street and people in their own homes.	Medium	Respond to the consultation to voice our concerns at the proposals.

10 Implications for resources

If the BIS proposals are implemented as stated, there could be significant implications for staffing due to the increased enforcement activity that would be required.

11 Implications for stronger and safer communities

If the BIS proposals are implemented as stated, there could be significant implications for public health and safety due to potentially unregulated / untested goods being available to purchase and the possibility that more people could be targeted in their own homes.

12 Implications for equalities

If the BIS proposals are implemented as stated, there could be significant implications with regard to equality of opportunity to trade. It could potentially be viewed as discrimination against aspiring retailers and fee-paying traders if a proliferation of unregulated street trading is allowed to proceed as proposed.

13 Author and contact officer

Nicola Mackenzie – Economic Regeneration Officer

13 Consultees

Market Working Group Members

Steven Wood – Head of Planning and Local Development

Victoria Phillipson – Principal Planning Policy and Regeneration Manager

Jennifer Bell – Project Co-ordinator

Nicola Holden – General Manager (Wellingborough NORSE).

Stephen Dunkley – Cleansing Manager (Wellingborough NORSE)

Henry Summerfield – Town Centre Charge Hand (Wellingborough NORSE)

14 Background papers

None

REQUEST FOR URGENT ACTION

(In accordance with Section 3.4.09 Urgent Action of the Constitution)

REPORTING COMMITTEE: Development Committee	
DATE OF NEXT MEETING: 11 JUNE 2013	
PURPOSE OF REPORT: TO RESPOND TO THE DEPARTMENT OF BUSINESS INNOVATION AND SKILLS (BIS) CONSULTATION ON STREET TRADING AND PEDLARY LAWS – COMPLIANCE WITH THE REQUIREMENTS OF THE EUROPEAN SERVICES DIRECTIVE.	
REASON FOR URGENCY: URGENT ACTION IS REQUIRED TO MEET THE CONSULTATION DEADLINE OF 15 MARCH 2013 IN ORDER TO SEEK APPROVAL TO SUBMIT A CONSULTATION RESPONSE IN ADVANCE OF THE DEADLINE.	
KEY FACTS: THE BIS CONSULTATION PROPOSES THAT THE PEDLARS ACTS 1871 AND 1881 UK-WIDE IS REPEALED. HOWEVER, IT IS NOT CURRENTLY PROPOSED THAT PEDLARS ARE SUBSEQUENTLY DEALT WITH UNDER STREET TRADING LEGISLATION. IF UNDERTAKEN IN ISOLATION, THE REPEAL OF THE ACT COULD HAVE A SIGNIFICANT IMPACT UPON: <ol style="list-style-type: none"> 1. RETAILERS WHO COULD REALISTICALLY HAVE PEDLARS SELLING THE SAME PRODUCTS AS THEY DO, SETTING UP DIRECTLY OUTSIDE THEIR PREMISES. 2. OTHER FEE-PAYING, LEGISLATION COMPLIANT STREET TRADERS, WHO HAVE BEEN 'VETTED' AND HAVE PURCHASED THE APPROPRIATE PUBLIC LIABILITY INSURANCE. 3. GENERAL PUBLIC SHOPPING IN THE HIGH STREET WHOSE CONSUMER RIGHTS COULD BE AFFECTED AS THEY WOULD HAVE NO GUARANTEE THAT THE GOODS THEY BUY ARE OF A SAFE STANDARD OR COULD BE RETURNED IF FAULTY. 4. PEOPLE IN THEIR OWN HOMES, WHO COULD SEE AN INCREASE OF PEOPLE ARRIVING AT THEIR HOME TO SELL THEIR GOODS, PERHAPS ACTING AS THE PERFECT FOIL FOR POTENTIAL BURGLARS TO 'INSPECT' PEOPLE'S HOMES. 	
FINANCIAL IMPLICATIONS (SEE BELOW): NONE	
SIGNATURES:	
• REPORT AUTHOR: 	DATE: 9 TH MAY 2013
• CORPORATE DIRECTOR: 	DATE: 10.05.13
• CHAIRMAN/VICE-CHAIRMAN OF COMMITTEE: 	DATE: 18.v.13
IF FINANCIAL IMPLICATIONS SIGNATURE OF:	
• CHAIRMAN/VICE-CHAIRMAN OF RESOURCES COMMITTEE:	DATE:

NB: To comply with the Constitution this signed urgent action pro forma must be attached to a report to the next meeting of the Committee concerned.



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: **Councillor Paul Bell
Leader of the Council**

Organisation (if applicable): **Borough Council of Wellingborough**
Address: **Swanspool House
Doddington Road
Wellingborough
Northants
NN8 5BX**

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
<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

No

Comments:

Provided that pedlars are then dealt with as a separate category of traders under street trading legislation.

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

The repeal of the act could have a significant impact upon:

1. Retailers – who could realistically have pedlars in the same products as they sell setting up directly outside their premises.
2. Other fee-paying, legislation compliant street traders, who have been ‘vetted’ and have purchased the appropriate public liability insurance.
3. General public shopping in the High Street – whose consumer rights could be affected as they would have no guarantee that the goods they buy are of a safe standard or could be returned if faulty.
4. People in their own homes, who could see an increase of people arriving at their home to sell their goods – perhaps acting as the perfect foil for potential burglars to ‘inspect’ people’s homes.

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?

Comments:

We believe that any trading should be dealt with under the street trading provisions. We are also concerned at the proposed receptacle size in respect of trading (other than house to house) due to the detrimental effect that ‘unlimited’ numbers these could have on the environment of the town centre, which is a conservation area. There should also be some kind of ‘registration’ process in order that:

1. the pedlar knows what is required of them
2. pedlar activity can be enforced to some degree.

There is also a concern that house to house trading contradicts the Trading Standards efforts to protect the elderly and vulnerable from cold calling as previously stated.

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:

We have some streets which have already been designated as consent streets, which contain specific pitches. These can be used for trading by established and new traders, provided the traders have the appropriate identification and insurance documents and have paid the appropriate fee. It would be unfair to require established traders to adhere to rules and regulations that would not be applicable to temporary traders. Introducing a distinction between the established and temporary traders would also make the enforcement of street trading activities more difficult.

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

Yes No

Comments:

This would seem reasonable.

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).

Comments:

We note the comments re the removal of age restriction given that it is covered by the Children & young Persons Act 1933. However, how, and by whom would this legislation be enforced. Clear guidance on this subject should be published.

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:

This is not possible to estimate.

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).

Comments:

It would be **necessary** (as opposed to helpful) for BIS to issue such guidance.

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).

Comments:

The removal of this provision could seriously damage local trade and result in the market for particular products being flooded by itinerant traders. This should be a decision made locally, according to local demand and market conditions.

It may also be difficult to accommodate 'unlimited' numbers of itinerant traders, as well as the potential threats to public health and safety due to unsafe / untested products that would be available.

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:

We do not feel that this would be necessary.

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 – see 7.1 above

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:

It would be necessary to have clear guidance on this subject.

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:

We could introduce a flexibility for temporary traders – e.g. in the form of a half-day consent.

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?

Comments:

This should remain and should be determined at the discretion of the local authority.

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

Comments:

Again, this should be determined at the discretion of the local authority.

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:

Provided our response to 8.2 applies.

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:

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:

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?

Comments:

Lengthening the duration of licences would give traders more stability and enable them to plan for their business in a longer term.

However, consideration would be required when setting fees as this usually happens annually – therefore some degree of flexibility would be required by both traders and Councils.

Question 10.2:

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

Yes We would consider doing so

(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:

This would be subject to discussion on a case by case basis, but we would be unlikely to grant indefinite licences as circumstances may change (e.g. new developments), which could necessitate a change of licence conditions.

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:

This would be necessary.

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:

It would falsely restrict competition if multiple applications were made and then not utilised.

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:

At local discretion.

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:

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:

To disapply regulation 19(5) of the PSR where a mandatory ground for refusal exists simplifies the process and makes it easier to administer.

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:

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

Yes

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:

Not that we are aware of.

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:

No Comment

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 Comment

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:

We have significant concerns about the current proposals as follows:

The current pedlars legislation is unsound; however there is no reason why pedlars cannot be dealt with under street trading legislation.

It is accepted that the pedlars legislation does not conform with the residency requirements of the ESD but there is no reason why a good character requirement cannot be maintained.

The ESD does not exist in a vacuum. There are other laws, policy objectives and indeed other objects of the EU Treaty which need to be considered before proposing reform.

Both EU and the UK Parliaments have shown a progressive intent to increase consumer protections. If these proposals are adopted it will be a significant retrograde step in achieving more effective consumer protection.

Implementing these proposals as stated will lead to unfair competition and the lack of a level playing field for market/street traders and a substantial lack of accountability and redress for consumers who deal with pedlars.

The proposals refer to a pedlar moving at a “reasonable speed”. It is difficult to know what is meant by that or how it could be enforced. The ten-minute rule contains caveats with regard to “customer service” and a “dithering customer”, staged or otherwise, would permit a pedlar to remain in one place for a considerable time.

There being no restriction upon the number of pedlars in the area, the proposals allow for the creation of a “mobile market” or a collection of pedlars in a group, following the same route around a town.

While the receptacle is limited in its measurements to two metres high and one metre around, there is no restriction on what can be hung from the receptacle making the overall offer significantly larger. In the context of the current definition of a pedlar there is no reason why pedlars should be

permitted any kind of receptacle. They should be required to carry what they intend to sell.

The provisions require a trader to move every ten minutes, subject to the comments made above, and then trade from another location fifty metres away. The pedlar cannot return to any location he has occupied during the previous three hours. It will be almost impossible to police these requirements and will lead to pedlars causing greater problems for Local Authorities and the Police. It is suggested that the period between trading locations is greatly extended.

We believe that there is no reason why the current exemption for pedlars cannot be removed and, following the repeal of the pedlars legislation, pedlars can be dealt with by existing street trading legislation.

Requiring pedlars to apply in advance would not inhibit their trading activities, just as the current arrangements which apply to casual market traders who turn up on the day of the market and are granted a licence to trade with a minimum of delay but with the knowledge that their trading is governed by a licensing framework.

In summary, the repeal of the act could have a significant impact upon:

1. Retailers – who could realistically have pedlars in the same products as they sell setting up directly outside their premises.
2. Other fee-paying, legislation-compliant street traders, who have been ‘vetted’ and have purchased the appropriate public liability insurance.
3. General public shopping in the High Street – whose consumer rights could be affected as they would have no guarantee that the goods they buy are of a safe standard or could be returned if faulty.
4. People in their own homes, who could see an increase of people arriving at their home to sell their goods – perhaps acting as the perfect foil for potential burglars to ‘inspect’ people’s homes.

For all of the reasons stated above, it is our opinion that, upon the repeal of the pedlars legislation, regulation of pedlar activities will be necessary and should be dealt with under street trading legislation.

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 X

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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