

BIS | Department for Business
Innovation & Skills

STREET TRADING AND PEDLAR LAWS

A joint consultation on
modernising Street Trading
and Pedlar Legislation, and
on draft guidance on the
current regime -
Government Response

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Government Response: A joint consultation on modernising Street Trading and Pedlar Legislation, and on draft guidance on the current regime

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Government Response: A joint consultation on modernising Street Trading and Pedlar Legislation, and on draft guidance on the current regime

Executive Summary

1. This document sets out the Government's response to the joint consultation on modernising street trading and pedlar legislation, and on draft guidance on the current regime. It also details the consequences of our subsequent conclusion that the Services Directive¹ applies in general to retail sale of goods, including pedlary and street trading. The consultation took place between 6 November 2009 and 12 February 2010. The consultation document can be found at: <http://www.bis.gov.uk/Consultations/street-trading-and-pedlary-laws>.

2. In the debates on the revival of private Bills being sought by some local authorities in the House of Commons on 5 July 2010 Edward Davey MP the Minister for Employment Relations, Consumer and Postal Affairs made clear the Government's view of pedlary as a legitimate business activity which in general should be subject to the minimum of restrictions and that the rights of pedlars need to be protected. He also said that a new national framework appeared to be needed if the genuine concerns of local authorities were to be met and to save those with a perceived need to obtain more powers to tackle illegal street trading from having to spend considerable sums on bringing forward private legislation. The Minister also acknowledged that the Government must be mindful of the rules set down in the Services Directive in formulating any future proposals.

3. There are approximately 4000 pedlars in the UK who essentially trade on foot, moving around to customers, carrying their goods. Some use a small means of transporting and displaying their goods. Pedlars are usually sole traders, often selling small novelty items. Licensed street traders, on the other hand, are generally static traders operating in a specific location from a stall selling fruit, clothes, etc. Many licensed street traders operate in street markets, other who operate from vehicles generally do so with the consent of local authorities where the street trader regime has been adopted.

4. It seems clear from the Department's earlier research, from debates on private bills in both Houses of Parliament and from the responses to the consultation that traders who operate more like street traders who should be licensed rather than pedlars are most likely to be the cause of concern to those local authorities who perceive they have a problem with traders in the street. On the whole it is these traders, who may be certified as pedlars but who do not trade in the way that pedlars should, for example by trading from substantially static positions using large trolleys or display devices, and yet are not licensed by local authorities to trade in the street, which give rise to some local authorities' desire to see their powers of enforcement extended and pedlars' activities restricted. Difficulties in establishing that a person certified as a pedlar is not in fact trading as a pedlar seem to be the main stumbling block to efficient enforcement of street trader licensing.

¹ Directive 2006/123/EC – OJ L376/36 27.12.2006

Services Directive Developments

5. The consultation document set out a variety of possibilities which, while they remain relevant in good part, could not take into account the Government's revised view on the coverage of the Services Directive. The Government now considers that retail sale of goods should generally be considered a service within the scope of the European Services Directive (this is explained further at paragraph 24 below). This change in interpretation has meant that we have had to consider how the application of the Directive to the retail sale of goods by certified pedlars and licensed street traders impacts on the options consulted on in 2009/10 in relation to the current legislative framework, and what changes are now necessary to ensure compliance with the Directive.

6. Our updated analysis of the provisions of the Services Directive against the authorisation scheme (certification) for pedlars in the Pedlars Acts and the authorisation scheme (licensing and consent) for street traders under the Local Government (Miscellaneous Provisions) Act 1982 and other similar street trader licensing regimes in the UK has resulted in the following general conclusions:

- i) The certification system for pedlars is untenable (we do not think such a system can be justified within the terms of the directive as it is too restrictive). Not only does the certification regime contain a residency requirement (banned under the directive) but we have no evidence to support the need to impose an authorisation regime based on a test of "good character" (which would be the most significant remaining criterion). We do not therefore think that continuing the certification regime can be justified as acceptable under the Directive.
- ii) Further, we do not believe pedlars should in general be regulated under other schemes. In other words, the European Services Directive and our preference both suggest we should deregulate pedlary and help pedlars be freer to trade across the UK.
- iii) Some elements of the street trader licensing regimes are also not, in our view, compatible with the Directive and will need changing. But we believe the principle of street trader licensing and consent is compatible with the Directive in relation to established traders (i.e. traders established in the UK) and temporary providers (i.e. traders established in another EEA state) where it can be justified for each in accordance with the Directive, but it is not in general compatible with the directive to apply such regimes to pedlars. Because the possible grounds in the Directive for justifying the existence of an authorisation regime are more limited for temporary traders than for established traders, we anticipate that two separate street trading licensing regimes may be required - one for temporary traders and one for all other traders.
- iv) Those of the existing street trader licensing and consent provisions which do not need to be changed to ensure compliance with the Directive must be applied in accordance with the Directive by local authorities. Local authorities throughout the UK are already obliged to act in accordance with the Provision of Services Regulations 2009, which implement the Directive.

- v) While we believe that pedlary should be looked on favourably in most circumstances, and we have no evidence to suggest that it should not be, there may be a case for providing that local authorities may be able to limit the numbers of pedlars trading in a particular location at particular times, perhaps via a temporary local authorisation scheme, providing that adequate justification can be made out in accordance with the Directive. However, the permissible grounds for justification seem very limited to us. In our view, this means, at least for temporary service providers, probably only for reasons of genuine public safety and where a local authority is able to show evidence for this justification.

7. Some local authorities who responded to the consultation favoured some means of limiting pedlar numbers, for a variety of reasons. However, most of these would not in our view be justifiable under the Directive. We will be seeking views on whether a regime to enable local authorities to limit pedlar numbers in certain circumstances is needed, for example where a pedlar would be required to be authorised in advance of trading. Also, whether some less restrictive measure would be sufficiently effective, for example monitoring by local authority officials of actual pedlar numbers in a particular location where it is anticipated that the number will jeopardise public safety, and a power to require traders for safety reasons to cease trading in that locality for a period of time. We will also seek views on the detail of how any such prior authorisation measure or other restrictive measure would work. For example, in the case of requiring prior authorisation to trade as a pedlar in a particular location at a particular time, how pedlars who might wish to trade should be made aware of the need to obtain an authorisation in advance. Clearly any scheme which was not sufficiently publicised to pedlars would be itself open to challenge.

8. The Government will also need to give consideration to whether any such measure that is thought to be needed and compatible with the Directive can be included in the regulations implementing the changes which are required by the Directive or whether some alternative legislative vehicle will be needed to provide for the measure.

9. In order to ensure compliance with the Services Directive the Government, the Scottish Government and the Northern Ireland Assembly may all need to make changes to the relevant legislation. Our analysis and the changes we have concluded must be made mean that several of the possible options included in the consultation document are no longer tenable, or practical.

10. The changes we consider necessary are:

- i) Repeal of the Pedlars Acts, as a deregulatory measure.

- ii) Removal of provisions in private or local Acts, and in devolved regimes which have the effect of making certain pedlars subject to street trading regimes, also a deregulatory measure.
- iii) To ensure the continued freedom of pedlars to trade, and to prevent re-regulation by another route, we intend to amend the current general exemption from street trading regulation for certified pedlars by clearly defining the exempted mode of trade. This should ensure that pedlars are generally free to trade and not subject to the street trading regime. It will also aid local authority enforcement of illegal street trading by enabling them to establish more quickly when traders are not trading as pedlars.
- iv) Amendment of parts of the street trading licensing regimes to bring them into line with the Directive.

11. As mentioned above, we will also consider what powers which are compatible with the Directive might be conferred on Councils to enable them to restrict pedlar numbers in certain limited circumstances, and probably only for genuine public safety reasons, and the extent to which any such powers can be included in the regulations making the amendments necessitated by the Directive.

Other matters

12. The matters consulted on which are substantially unchanged by the Government's revised interpretation of compliance with the Services Directive include options to provide within the street trader licensing regime the option for local authorities to adopt wider enforcement powers of the type already obtained and currently being sought by some local authorities in private Acts of Parliament. We also consulted on draft guidance for enforcers and traders on areas of the current regimes that the evidence suggested was causing confusion, in particular about when the exemption for pedlars from street trader licensing applied.

13. Although our ability to provide for more enforcement powers (fixed penalty notices, seizure and confiscation of goods etc.) is not affected by the Services Directive and many of the local authority respondents to the consultation favoured acquiring more powers, there was very little substantive evidence provided on which a convincing case for change to the national rules could be based. Others who responded on these options either opposed or were less enthusiastic about providing local authorities with new "in the field" powers at all. They suggested that offences under the street trader licensing regime or under the Pedlars Acts should be dealt with in the normal way, through the courts.

14. We will not therefore be proposing changes to legislation to broaden local authority enforcement powers. The changes we will be proposing in respect of the exemption for pedlars from street trading regimes should achieve greater clarity for enforcement officers and pedlars about modes of trading; this appears to be the chief cause of problems for local authorities. We do not intend to remove additional enforcement powers already

obtained and we understand the Northern Ireland Assembly is not minded to change this element of the NI regime.

15. Our draft guidance on the current regime attracted many useful comments and suggestions for which we thank those who responded. However, the changes we feel are necessary and the fact that we can make those required by the directive in secondary legislation which is likely to be achieved to a faster timetable than would otherwise have been the case alleviates some of the pressure for interim guidance. We have decided not to pursue the guidance at present. We will be producing guidance on the changes which we will be making and all of the comments received in respect of our draft have been noted. They will not only help to inform future guidance but will also help to inform our forthcoming work particularly on a new exemption for pedlars from street trading regimes to replace the current one for certified pedlars trading as pedlars.

16. The remaining issue on which we consulted concerned the right of appeal to the Secretary of State contained in the City of Westminster Act 1999 and the London Local Authorities Act 1990. Those who responded on the proposal to change these appeals so that they would in future be heard by magistrates all agreed. There is currently a replacement City of Westminster Bill in Parliament which would remove the right of appeal to the Secretary of State. We will be proposing that the remaining right of appeal to the Secretary of State in the London Local Authorities Act also be removed and assigned to magistrates and again will be considering by what means this change can be achieved

Introduction

17. The then Department for Business, Enterprise and Regulatory Reform published a consultation document on 6 November 2009 seeking views on the case for, and possible options for amending and modernising the law as it applies to the control of street trading and the certification of pedlars.

18. The consultation period ran for 14 weeks, closing on 12 February 2010, the consultation period was extended beyond the normal 12 weeks at the request of pedlars because it spanned their busiest trading period, the weeks preceding Christmas.

19. We received 87 responses, 62% of which were from local authorities. Other stakeholders that responded included pedlars and pedlars representatives, LACORS (now LGR - Local Government Regulation), town centre managers, police officers and the Association of Chief Police Officers (ACPO), trading standards offices, the National Association of British Market Authorities (NABMA), a legal firm and some individuals. A summary of responses can be found at Annex A and a full list of those who responded at Annex B. We also undertook to publish all of the responses. These can be found on the BIS website along with this document in the closed consultations with response area: <http://www.bis.gov.uk/Consultations/category/closedwithresponse>.

20. The consultation document was sent to a range of relevant stakeholder organisations, as well as to a list of pedlars, pedlars' representatives and local authorities with an interest in street trading and pedlary law.

21. We had planned to publish this response earlier. However, we realised that it was necessary to revise our interpretation of compliance with the Services Directive in this area and coupled with the purdah period over the General Election earlier publication was not possible.

22. The main areas the consultation sought views on were:

- Ways of making the street trading and pedlary regulatory regime more proportionate and effective including consideration of whether to provide an alternative appeal body in place of the Secretary of State in relation to some street trading appeals in London.
- Providing local authorities with additional enforcement options in respect of illegal street trading.
- Updating the Pedlars Act 1871 to modernise the certification scheme and the definition of a pedlar including consideration of whether responsibility for issuing certificates should be transferred from the police to local authorities and if so, what options there were for maintaining the current position whereby a certificate authorises trading nationally.
- Introducing a means by which, local authorities might exert proportionate limits on certified pedlar activity in designated areas.
- Options for revoking the Pedlars Acts and providing for adequate regulation of itinerant traders within the street trading regime.

- Draft guidance on the application of the current regime for enforcement officers, street traders and pedlars looking at what constitutes acceptable street trading and pedlary practice.

Developments in Interpreting the Application of the Services Directive (2006/123/EC) and Necessary Changes

23. Since we identified the possible options for change set out in the Consultation Document our interpretation of compliance with the Services Directive has developed in the course of the formal evaluation of the Directive amongst Member States. Previously, it had been our view that where a retail activity exclusively concerns the sale of goods (because, for example, it does not involve any additional activities such as the provision of customer advice) it generally does not constitute a service activity within the scope of the Directive. The consensus which has now developed amongst Member States and the Commission is that the retail sale of goods is generally a service activity within the scope of the Directive. Pedlars, as defined in the Pedlars Act, and street traders as covered in the Local Government (Miscellaneous Provisions) Act 1982, the London Local Authorities Act 1990, the City of Westminster Act 1999, the Civic Government (Scotland) Act 1982 and the Street Trading Act (Northern Ireland) 2001 are engaged in the retail sale of goods and therefore are subject to the Directive. Any authorisation schemes which affect the ability of individuals to participate in pedlary and street trading both as established traders in the UK and temporary providers from other EEA States must therefore comply with and be applied in accordance with the Directive.

24. It has therefore been necessary for the Department to screen the provisions of the Pedlars Acts and the street trader licensing regimes for compliance with the provisions of the Directive. To ensure compliance with the Directive we must be satisfied that any authorisation schemes are capable of being justified in respect of established traders and temporary traders within the terms of the Services Directive. The need to comply with the Directive has a significant effect on our earlier proposals because we now consider that pursuing several of the options aired in the Consultation Document would not be compatible with the Directive. Also, some of the options have become redundant as the result of the action we have concluded must be taken in order to ensure compliance with the Directive. Nevertheless, the responses to the Consultation have provided us with valuable further insight into the views of the variety of interested parties who responded and those views will inform how we now take forward our options.

25. As we seek to ensure compliance with the Directive in this area it is the Government's firm desire that pedlars will continue to be free to trade with the minimum of restriction and that local authorities who choose to will continue to be able to properly enforce street trader licensing and consent regimes against illegal street traders. This is set within the broader Government policy on regulation: that Directives are implemented in ways which have the minimum impact on business; that any restrictions on business are properly and fully justified; and that any new domestic regulation is based on firm evidence that it is needed and will achieve its objectives.

26. Authorisation schemes are only permissible if they are justifiable within the terms of the Services Directive. The essential objective of the Directive is to allow freedom to provide services including for providers to be able to test markets in other member States

on a temporary basis with the minimum of additional restriction before becoming established in a member State.

27. It should be noted that pedlars and other street traders, being service providers, are subject to Part 2 of the Provision of Services Regulations 2009 (SI 2009/2999) which includes the requirement to make specific information available to customers and to deal with complaints promptly. Guidance for business is available on the BIS website at: <http://www.bis.gov.uk/files/file53100.pdf>

Pedlars Acts

28. We take the view that the existing requirements that pedlars be:

- certified by the police;
- subject to the test that they be resident in the area of the police station where an application for a certificate is made for at least one month prior to the date of application; and
- subject to a test of “good character”.

are not tenable or justifiable under the Directive. Authorisation schemes based on a residency requirement are not permitted under the Directive.

29. In considering the position we have taken into account what type of authorisation schemes can be justified under the Services Directive.

30. Authorisation schemes that apply to temporary providers can be justified but only on very limited grounds: that they are non-discriminatory; that they are necessary (i.e. that they can be justified for reasons of public policy, public security, public health or protection of the environment); and that they are proportionate, i.e. that they are suitable for attaining the objective pursued and do not go beyond what is necessary to attain that objective. For these purposes, “reasons of public policy” has a narrow interpretation namely protection against a genuine and sufficiently serious threat affecting one of the fundamental interests of society.

31. Any justification for an authorisation scheme must be based on clear evidence. We have no evidence to suggest that pedlars who operate substantially within the current definition of a pedlar in the Pedlars Act 1871 (“genuine pedlars”) should be subject to an authorisation regime for any of the reasons mentioned above. We have concluded that an authorisation regime in respect of temporary providers cannot therefore be justified.

32. The possible justifications for maintaining authorisation schemes that apply to established service providers in member States are less restrictive and include, for example, consumer protection. However, given that service providers (including pedlars) are required under the Provision of Services Regulations 2009 (SI 2009/2999) to provide certain information to those receiving their services and to deal with complaints promptly, justification on consumer protection grounds would appear not to be tenable especially as pedlars, like other traders, are subject to other consumer protection regulation. Furthermore, we are not aware of any evidence of consumer detriment caused by the activities of pedlars who trade within the current definition.

33. We have considered whether, even if a certification regime for established pedlars could be justified, there would be any benefit in retaining a certification regime for established pedlars but not for temporary pedlars. So far we have concluded that this would not be workable because the itinerant nature of the provision of this service is such that it would be difficult for a local authority to show that a pedlar was really an established trader if he claimed that he was a temporary one. It would therefore be difficult to enforce a certification regime for established providers only.

34. We have concluded, therefore, that we should deregulate pedlary by repealing the Pedlars Acts to remove the requirement that pedlars be certified before they can carry out their trade. From the responses to the consultation it is clear that several certified pedlars will be very concerned at this proposal as they value their certification as providing firm proof of their legitimacy to carry out their activities when trading within the current definition of a pedlar. On the other hand there are those who have apparently obtained pedlars certificates with little or no intention of trading as permitted and who have used their certificate as a means of frustrating local authority enforcement against illegal street trading. As mentioned above the Government intends to ensure that pedlary continues to be a legitimate activity and that pedlars are able to trade with the minimum of restriction. See also the section below on Maintaining Pedlars' Right to Trade (para 41).

Street Trader Licensing

35. We believe that there is justification in accordance with the Services Directive for maintaining an authorisation scheme for static street traders by local authorities. However, the detailed rules of the street trading regimes will need to be analysed further, including those contained in local Acts, to see what legislative amendments are needed to ensure compliance with the Directive and the extent to which reliance can instead be placed on the existence of the Provision of Services Regulations 2009. Part 3 of those Regulations, for example, sets out the duties of competent authorities such as local authorities in relation to the provision of services by established providers. For example, the criteria on which licensing decisions are based must be justified for established traders by an overriding reason relating to the public interest, as defined in the Directive.

36. The rules on temporary licences in local acts and consents to trade in the street are far more flexible for local authorities than the rules which apply to licences. It will therefore be important for local authorities to take care to only apply these provisions where justified by and in accordance with the Directive.

37. Because the Directive contains different rules in relation to temporary providers and established providers, it may be that reasons justifying a licensing regime in relation to established providers do not justify the same regime in relation to temporary providers. We shall therefore be considering the extent to which we need to amend the street trader licensing regime to allow for the different treatment of providers established in the UK and temporary providers from other EEA member States. If different treatment is necessary, we envisage that temporary providers from non-EEA member States would be subject to the same regime as established providers. It will be for local authorities in meeting their obligations under the Provision of Services Regulations to ensure that in operating a street trader licensing regime in respect of established and temporary providers they do so in a way which is compatible with the Directive.

38. We shall be consulting on detailed proposals for amendments to the street trader licensing regimes in order to ensure compliance with the Directive. We would prefer to make any necessary amendments to the local Acts and the rules which apply in the devolved administrations at the same time as any necessary amendments are made to the national regime to ensure continuity and compliance with the Directive.

39. Under the Services Directive member States are required to ensure that the application process for authorisation is accessible electronically and via a Point of Single Contact. Several local authorities have already made their street trader licence application process available on the Point of Single Contact. All local authorities who adopt a street trader licensing regime will need to ensure that applications for licences can be made via the Single Point of Contact and that other requirements for providing information and assistance are met (see Parts 6 and 7 of the Provision of Services Regulations 2009). These duties already exist and will not need additional regulation.

Maintaining Pedlars' Right to Trade

40. In order to meet our objective of freeing-up the pedlar regime and in the absence of the Pedlars Acts it will be necessary to adjust the existing exemption from street trading regulation for certified pedlars trading as pedlars. The current exemptions rely on a reference to pedlars as certified under the Pedlars Act 1871. For example, "a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act..."

41. We will therefore formulate a new exemption for pedlars from street trading regimes. Our intention will be to define more clearly the characteristics of pedlary so as to create clear demarcation between the types of itinerant trading for which no requirement to obtain a street trading licence or consent is justifiable, and the remaining modes of trade in the street for which licensing regimes can be justified and should be applied. Such an approach should help to ensure that those trading within the definition of pedlary will be able to do so freely and that local authorities will be better placed to identify those who do not trade within the definition and who, therefore, are subject to street trading regulation and enforcement. Itinerancy, mobility and trading on foot appear to be the most essential features of pedlary. It will be a matter of further refining these matters, taking into account case law on the current definition, to ensure that as far as possible traders causing genuine problems for local authorities are not covered by the new definition of pedlar while being careful not to unduly restrict the mode of trading adopted by pedlars. We intend to take forward work on this with pedlars and local authority representatives.

42. General restrictions on pedlars currently contained in local Acts of Parliament such as those which have the effect of making certain pedlars (for example those not trading door to door) subject to street trading regimes do not appear to be sustainable or justifiable within the terms of the Services Directive. Street trading regimes also appear not to be suitable in respect of itinerant trade. By virtue of the exemption for certified pedlars trading as pedlars, they were not designed to be so. It is our intention to remove provisions in private or local Acts which are not in line with the new exemption for pedlars mentioned above. See below for further consideration of the possible need for changes to allow for specific restrictions on pedlar trading in certain circumstances (para. 48).

Remaining Considerations.

43. Legislative changes which are required in order to ensure compliance with the Directive can be made by regulations under the European Communities Act 1972.

44. The need for regulation beyond that which is required in order to comply with the Directive must be considered separately as that may well require a different legislative vehicle. In that case it would almost certainly need to be taken forward to a different timescale. Additional regulation is very unlikely to be introduced unless alternatives have been considered and it has been justified both in terms of substantive evidence of need and, where necessary, in accordance with the Services Directive.

45. Additional enforcement powers - powers to seize the stock and means of trade of illegal street traders, and to seek their forfeiture as well as powers to issue fixed penalty notices for illegal street traders - were covered in our consultation and details of the responses are set out below. Although some local authorities argued quite forcibly for more powers along the lines of those acquired by local authorities with private Acts (citing difficulties in monitoring illegal street trading), we have received no substantive evidence to justify the need for change to the national legislation in the context of the possible options consulted on. We have therefore concluded that there is insufficient evidence for the need to regulate to make these powers available as part of the national regime. Where these powers have already been obtained they will remain unchanged. As is intended, the demarcation between pedlars and other street traders will be clearer and we would expect this to aid local authorities to deal with illegal street traders using the powers currently available.

46. Restrictions on Pedlars - The possibility of introducing some restrictions, particularly on numbers for specific reasons at specific times, was addressed in the consultation. Responses were fairly clearly divided between those supporting restrictions and those who did not. Most of the pedlar responders saw no reason to impose any restrictions, arguing that the market automatically dictates the appropriate or sustainable level of pedlar activity at any given time, or who believe that local authorities would not apply restrictions in a fair way. Others including most local authority responders that argued for restrictions mostly cited public nuisance and congestion as justification. Some felt that a system by which only a given number of pedlars would be permitted to trade at a given time might complicate the licensing system and noted that it is difficult for local authorities to monitor numbers of itinerant traders. If the conferral of powers on local authorities to restrict pedlar numbers in certain circumstances can be justified in accordance with the Directive it would, in our view, be for local authorities to decide whether the imposition of any such restriction and enforcing it was a priority in their area. Again, we received no substantive evidence of any detrimental consequences of the current absence of a power to restrict pedlar numbers. From the anecdotal evidence we can appreciate that in some circumstances, particularly in highly congested areas, there may be good reason on public protection/safety grounds to be able to ensure that crowds are able to move freely. Public safety is a possible justification under the Services Directive although Local Authorities would also need to be able to show that any restrictions were proportionate to the public safety objective, went no further than was necessary to attain the objective and that the objective pursued could not be attained by means of less restrictive measures.

47. We will therefore consult on proposals we consider are needed and justified in accordance with the Directive which would provide local authorities with the option of limiting numbers of pedlars in certain circumstances.

48. We envisage that in practice any such powers would be limited to account for specific events, specific time periods or locations. The imposition of restrictions on pedlar numbers, for example, by way of a prior authorisation regime, would need to be justified in accordance with the Directive. It is important that any system for setting limits must be transparent and that pedlars would have easy access to the applicable rules.

Guidance on the Current Regime

49. On the grounds that there appeared to be a degree of consensus that guidance on the application of the current regime would be of use to local authorities and pedlars we consulted on a draft. We received helpful and useful feedback on this from those who responded. In the light of the significant changes necessary in order to ensure compliance with the Services Directive and the need to expedite these, we will be doing no further work on this at the moment. Instead, we will issue guidance when new regulations are made to bring the regime into line with the Directive.

Government response to questions

50. In the light of our analysis of the effect of the Services Directive (above) and the changes we believe are now necessary to ensure compliance with the Directive to these areas of law it will be appreciated that many of the possible options outlined in the Consultation Document have been superseded or are less relevant. We have identified these elements in our comments (“Government’s response” sections) below.

51. Annex A to this document contains a fuller summary of all the comments we received in relation to each question. We have also published all of the responses on the BIS Web site at:

Defining Pedlary

Question 1: Do you agree that the definition is in need of updating and clarifying? if not, please provide your reasons.

Question 2: Do you think anything should be taken out or added to the list?

Question 3: Do you think the permitted size of a trolley should be set out in the definition? Please provide reasons for your answer and an indication of any size you think appropriate.

Question 4: Do you have alternative suggestions? Please provide them.

52. All the Local Authorities and other bodies responding agreed that the definition of “pedlar” needs updating and the whole area looked into. It was felt that the current Act is outdated and now needs to reflect modern day trading in the 21st century.

53. Other specific phrases in the Pedlars Act needed to be better defined or changed altogether to reflect changes in modern day trading.

54. Pedlar respondents were generally not in favour of changing the definition, arguing that the current definition is capable of being accurately interpreted in the context of specific trading example which might come to the courts.

Trolley size

55. A large number of the responses from local authorities called for specifications on trolley size. Some thought the use of trolleys by pedlars should be stopped altogether.

56. There was mixed opinion amongst the pedlars as to whether the size of a trolley should be set out in the definition. Some felt that if a trolley causes a genuine obstruction to the public then it is too large. Others felt that it was for regulating authorities to bring forward the offence according to the relevant law which could, for example, be about obstruction.

57. **Government's response:** As described above, we will be seeking to better define the type of trading which should continue to be exempt from street trading regimes, albeit not in the context of the Pedlars Acts which we have concluded should be repealed. We will consider in the context of the new exemption from licensing all the comments we have received which refer to the trading activities of pedlars and the characteristics of those activities which make them different to street traders who are subject to local authority licensing where adopted by the relevant local authority.

Certification of Pedlars

Question 5: In your view will updating the certificate as described above make verification and identification of lawful pedlars easier for enforcement officers? Please give reasons for your answers.

Question 6: In your view is the list of information to be included in a modified certificate complete? If not, please state what information you believe should be added/removed and why.

58. It was generally agreed among local authorities that updating and standardising the certificate would be a very welcome move and greatly help enforcement officers. There was at present inconsistency in the types of certificates issued amongst various police forces. Most Local Authorities called for a certificate or licence containing at the very least: date of birth; photo ID; and, address of the pedlar.

59. It was argued that the issuing authority should be able to recover administration costs of any certification scheme from the fees charged to pedlars.

60. One Council thought it was too costly an exercise and inclusion of pedlars under the LG(MP)A would be a better solution. Belfast City Council were concerned that pedlars might try and trade in Northern Ireland where they would be deemed as illegal street traders and a consistent approach across UK is therefore required.

61. Most pedlars agreed that the certificate was in need of updating. A standard certificate for the whole of the UK with a photo and other details that can be verified from a central database e.g. a unique certificate number would eliminate all ambiguity with regards to authenticity.

62. However the majority of pedlars did not agree with the Government's observation that an improved certificate would add to reliability in respect of enforcement action such as fixed penalty notices - they saw the purpose of the certificate as mainly for the protection of the pedlar by being able to quickly establish their right to trade. For some respondents there is an important link to the historical freedoms & traditions associated with pedlary, which local authorities are perceived to have challenged by introducing private legislation limiting the scope for pedlars to trade in the streets.

63. Those pedlars who disagreed that the certificate needed updating felt that a better solution was to improve the training of enforcement officers about lawful pedlary. They felt that verification was a minor aspect of the greater issue of prejudice and harassment.

64. LACORS (now LGR) thought that the proposals to update the certification process would make verification and identification of pedlars easier. A national format was necessary and should include photographic ID.

65. **Government's response:** As mentioned above, to ensure that the Services Directive is correctly implemented we have concluded that the certification of pedlars is no longer tenable. In future, therefore, we envisage that pedlars will not need to be certified.

National Database of Certified Pedlars

Question 7: Do you think that a national database of pedlars' certificates will improve the current system of enforcement and certification?

Question 8: Do you agree that the list of information to be held on the database is complete and correct? If not, please state what information you would remove/add and why.

66. There was general agreement amongst local authorities that a national database would be desirable. Currently the police and local authorities have no means of checking previous offences in respect of pedlars. A database would be very useful when issuing new certificates and improve the current system of enforcement.

67. To be effective the database should be regularly updated and offer easy access to the enforcement community and the police. It was suggested by one local authority that the database should include information inputted not only from the police but also from the OFT and the Trading Standards register of offences. Another local authority raised the issue of Data Protection considerations.

68. There was some concern about who would administer it and about the implications on increased costs and resources for local authorities to bear. Many thought the money from pedlar certificate fees could cover costs. Another issue was whether the fee would be fixed nationally or locally.

69. One local authority and thought a database would be too expensive to maintain and that exemption for pedlars under the LG(MP)A would get rid of any need for one.

70. Pedlars feel that a national database would improve the current system. They believe only the police have national competency to manage the database and the impartiality to do so in an even handed way. They give an example of the shared database of the DVLA for police to enable instant verification of the registered keeper of a vehicle, which can be accessed on board police vehicles. One pedlar felt that the issue of people operating under fraudulent pedlars certificates is miniscule, and that the licensing officers that they have encountered see "no legitimacy in the pedlars' certificate as a license to trade."

71. LACORS (now LGR) said that a national database was only of use if updated regularly and accessible to councils and the police. They raised the issue of cost implications. There needed to be further thought and discussion to consider the financial implications with focus on costs versus benefits and to look at other issues such as data protection, hosting and access.

72. ACPO saw the benefit of a national database allowing the sharing of information between local authorities and the police. They were keen to pass the responsibility to local authorities for carrying out the certification process. A national police database would be unrealistic due to the small number of pedlars in the UK. The Federation of Small Businesses thought a database may not be necessary given that it is possible for enforcement officers to obtain details direct from the issuing police station.

73. **Government's response:** The idea that there might be a national database of pedlars was linked to the idea that the certification process should be updated, both to ensure that enforcement action was better informed and also to enable pedlars to be more easily traced in the event of consumer complaints etc. Without a requirement that pedlars be certified and with the application of the information requirements on service providers in Part 2 of the Provision of Services Regulations 2009 (SI 2009/2999) the potential need for a central database falls away.

Question 9: Would you support the re-introduction of certification for pedlar service providers? If so, please say why and provide any evidence in support of your view. If not, please say why.

74. There was a split in local authorities between those who agreed (20) and disagreed (9). Other local authorities either did not comment or expressed no preference.

75. Most pedlars expressed the view that pedlars of services should still have a certificate.

76. Also, there was a concern among pedlars that without a certificate, pedlars of services would have what they perceive as the protection of the certificate removed. It was remarked that "as a pedlar you have a 'lawful excuse' with regards to obstruction of the highway. Can you therefore show how service providers working on the highway can trade lawfully seeing that they no longer enjoy the protection of their pedlar certificates?"

77. One pedlar commented that they did not think it was necessary to re-introduce certification for pedlars of services as the service providers are able to still work anywhere throughout the UK.

78. **Government's response:** In the light of our conclusions on the changes necessary to ensure compliance with the Services Directive all pedlars will no longer be subject to certification.

Criteria for Granting a Certificate

Question 10: Do you think the proposed criteria will offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a certification?

79. Local authorities tended to agree overall that the proposed criteria would offer greater clarity on what was expected in respect of a pedlar's suitability to hold a certificate. In order to avoid too much subjectivity and inconsistency there were calls for better clarity of the definitions of "good character", of what is considered "not suitable" and of "other sufficient reason". Clarification is also needed on how an appeal against refusal of application can be made and the reasons for refusal of granting certificate should be made clear in any guidance.

80. The majority of pedlars thought the proposed criteria would not offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a pedlars certificate.

81. It was also suggested by a pedlar that if the applicant fails the checks then a certificate can be refused, subject to the right of appeal through the courts. He also added that people applying for a street trading licence "do not always have criminal record checks carried out by the local authorities, and that any person can open a shop no matter what previous convictions they have, subject to no licensing requirements being needed for the type of retail they intend to operate."

82. Pedlars also commented on the terms suggested in the Consultation Document suggesting that they would require clarity and definition in statute and as presented in this document do not further the clarification of who is suitable for a certificate any more than the term "good character" used at present in the 1871 Act."

83. Only one pedlar felt that the proposed criteria will offer greater clarity in terms of what is expected from a pedlar with regards to suitability to hold certification.

Question 11: Do you think the proposed criteria will lead to a more consistent approach to refusal of applications from issuing authorities?

84. There was mostly agreement among local authorities that the proposed criteria would lead to a consistent approach to refusing licence applications for issuing authorities and help the right of appeal in the courts. However, it was vital that there was absolute direction on implementing the system and a consistent approach from local authorities and the Police.

85. One pedlar said that the criteria will not be consistent, but rather it will be ambiguous and undefined in law, therefore open to interpretation and without the safeguard of definition and clarity.

86. On the whole pedlars were sceptical that new criteria would necessarily provide them with added protection or security, particularly if local authorities were to be the licensing authority

87. **Government's response:** These questions on the criteria to be applied to the application process for pedlars' certificates are no longer pertinent in the light of our conclusions that pedlars should not be subject to certification.

Issuing Authority for Pedlars Certificates – the Police or Local Authorities?

Question 12: In your view, should responsibility for issuing pedlars' certificates be transferred from the police to local authorities? Please give reasons for your answer.

88. Nearly all of the local authorities that responded felt that they are best placed to deal with issuing certificates as councils already issue street trader licences, and many think it would be better to put all street traders under one "roof". We did not receive any practical suggestions for how this might be achieved nationally but the inference was that the LG(MP)A would be amended to include licensing for pedlars if the pedlars acts were repealed.

89. The main concern for local authorities was to ensure that there are enough resources in order to carry out this task and that the fees would be set at a level to recover all costs.

90. The local authorities against taking on certification said that the police already have a system in place which would need to be transferred to councils and would be costly to do.

91. Pedlars were against the responsibility for issuing certificates being transferred to the local authorities. They say the consequences of the option of placing pedlar certification in the hands of local authorities, included in the consultation have not been properly considered and amendment to the LG(MP)A will impose on those councils who have no desire to regulate street trading and or have not adopted the LG(MP)A. Such a force is likely to be construed to have no basis in law.

92. However, it is not clear what our pedlar contacts preferences would be if given a choice between no certificate and a certificate issued by local authorities.

93. LACORS (now LGR) said that updating and consolidating pedlar and street legislation into a single system is worthy of consideration. Transferring the issuing of certificates from the police to councils because of their street trading links is also sensible. The cost implications in administering this would need to be considered. An advisory group should consider this further in consultation with local authorities across the UK.

94. **Government's response:** Our conclusion that pedlars should no longer be subject to certification renders these questions redundant.

Terms for Refusal of Pedlars Certificates, and Appeals

Question 13: Do you think that clear terms for refusal of applications in the legislation, coupled with a right of appeal, are sufficient safeguards to ensure a fair and non-discriminatory certification regime? If not, what alternative or additional safeguards do you think are required?

95. Overall, local authorities agreed with this. It was felt that clear terms for refusal of certificates would add consistency to the process and a right of appeal will provide safeguards. The terms for refusal should be clear and the phrase “sufficient reason” in the Consultation Document could be better clarified. Other reasons given by local authorities for favouring this option were that it would provide sufficient safeguards and an appeals mechanism.

96. Some pedlars implied that so long as the issuing authority stayed with the police then refusal for applications would be fairer and ‘unbiased’. One pedlar remarked that if legislation was altered to permit refusal ‘reason of misconduct or other sufficient reason’ it would not ensure a fair and non-discriminatory regime. However they went on to say that if refusal was based on convictions and there was the possibility of appeals that can be heard through the judiciary then they would be inclined to answer yes.

97. Another pedlar thought that clear terms were already stated in the Pedlars Act.

98. LACORS (now LGR) said that a system of refusal and right of appeal was consistent with other existing licensing regimes. The Magistrates Association thought that the Right of Appeal should be heard through a Magistrates Court as for street trader and other licensing disagreements.

99. <u>Government's response:</u> Our conclusion that pedlars should no longer be subject to certification renders these questions redundant.

Revoking the Pedlars Acts and Licensing Pedlars as Part of the Street Trader Licensing Regime under the Local Government (Miscellaneous Provisions) Act 1982 (LG(MP)A) and Civic Government (Scotland) Act 1982).

Question 14: What are your views on revoking the Pedlars Act and licensing pedlars under the Local Government (Miscellaneous Provisions Act 1983 and Civic Government (Scotland) Act 1982 and how might this affect street trading or pedlar activity?

Question 15: With further work, do you think this option is viable? Please give reasons for your answer.

Question 16: Are there other ways of maintaining the national access to pedlar certificates other than under the Pedlars Act?

100. Many local authorities thought that repealing the Pedlars Act was a very good option and felt it to be a move in the right direction to include pedlars in the LG(MP)A, to review the definition, and have one licence for all street traders, itinerant or otherwise. Some clearly saw this as a route to greater local control over pedlars.

101. It was also suggested that with the transfer of granting permission should come the transfer of enforcement, including seizure of goods and Fixed Penalty Notices; giving local authorities enforcement officers more control to tackle rogue traders.

102. Some local authorities did however think that repealing the Pedlars Act might cause an increase in the number of traders; creating problems for enforcement. They suggested that the definition should be amended to door to door sales only otherwise all activity should fall into scope of the street trading regime and be regulated by local authorities.

103. Local authorities felt that there were difficulties in maintaining national certification scheme under the LG(MP)A as not all local authorities have adopted it. A system needs to be in place that ensures cross UK consistency. Belfast City Council said that they agree further work on options is viable in Northern Ireland - local authorities there have experience and the police are stretched

104. Pedlar respondents were against repealing the Pedlars Act and believe this would mean the end of pedlary. They are happy with the Pedlars Act and see no major problem with the status quo; they don't think it is necessary to spend time and money putting another system in place. Almost exclusively, the pedlar experience of interaction with local authority officers, as reported to us, is negative and is characterised, in their view, by seemingly ill informed enforcement decisions at the street level and more systemic ill feeling against pedlars across the enforcement community.

105. In general, the pedlar respondents did not see a need for modernisation and do not want local authorities to take over control of pedlars. They are strongly against local authorities having a say in the certification process and a majority of those that responded believe that local authorities would push pedlars out of their towns, although some observed that licensing run by local authorities may be workable if clearly defined processes were outlined. Our pedlar respondents are proud to possess pedlars' certificates which they see as a means of protection from unjustified enforcement action and see no benefit in doing away with them. On the whole they favour the police retaining responsibility for certifying pedlars.

106. LACORS (now LGR) thought that incorporating pedlars within the LG(MP)A and Civic Govt. (Scotland) Act would simplify matters but such a process would need to be worked through with the Convention of Scottish Local Authorities, Northern Ireland Local Government Association and the Welsh Local Government Association.

107. The National Market Traders Association said that failure to adopt pedlars in LG(MP)A (in the absence of the Pedlars Acts) could provide safe havens for illegal traders. They did not elaborate.

108. **Government's response:** As described in this document we have considered whether, because maintaining the national certification regime for pedlars is no longer tenable, pedlars could or should be subject to local street trading regimes. We have concluded that they should not for two reasons:

109. We have no evidence that pedlars who trade essentially in accordance with the definition in the Pedlars Act cause any significant problems for most local authorities, consumers, or the wider public at large. There therefore appears to be no justification which would fit within the Services Directive which would enable us, even if we were so minded, to regulate nationally to bring those who trade as pedlars within local street trading regimes;

110. Pedlary is a legitimate trading activity and one which should be generally open and available to UK and other citizens with the minimum hindrance. In the absence in future of a national regime for certifying pedlary, individual local authority licensing poses significant problems given the itinerant nature of pedlary and the fact that pedlars may currently choose from day to day where to trade. Any restrictions on pedlary should be founded only on firm evidence of a need based on, for example, concern for public safety. The issue of local restrictions on pedlary for specific reasons which can be justified under the Directive is addressed later in this document

Revoking the Pedlars Act and excluding Pedlar Activity from Street Trading Regulations

Question 17: What are your views on the above option? Please give reasons for your answer.

111. The majority of local authorities were against this as they suggested that having no control over itinerant traders would give rise to problems – “a rogues’ charter”. Some of these local authorities seemed to favour simply banning pedlary. None provided any substantive evidence of problems caused by pedlars operating within the definition of a pedlar.

112. They also pointed out that the lack of a certificate would make it very difficult for enforcement officers to identify pedlars, which would probably result in police involvement. However, this did not take into account the application of the information provisions of the Services Directive which we now consider apply to all to the retail sale of goods (as explained in paragraph 21) by virtue of the Provision of Services Regulations 2009.

113. Other local authorities were more relaxed about this proposal and felt it would be less bureaucratic, but most still desired some means of controlling pedlars. One recognised the importance of achieving a well defined and clear exemption.

114. Pedlars were generally strongly opposed to the idea that they should not be certified since certification is an aspect of their traditional business model which the prominent pedlars clearly cherish. They value the certificate as proof and official recognition of their permission to trade in areas where otherwise street trading is subject to controls.

115. Pedlars acknowledge that one of the regular complaints local authorities make is the inability to enforce consumer protection regulation or to trace alleged offenders. They say the pedlars certificate gives protection to both pedlars and the public, that without this certification requirement pedlary would be a 'green light' for rogues and criminals to be free to operate on the street.

116. LACORS (now LGR) has concerns about revoking the Pedlars Act and excluding from street trading regimes except in specific defined circumstances - revoking the Act and then having no certification scheme would not enable local authorities to exert proper controls over itinerant traders. They did not explain what they meant by proper controls.

117. The National Market Traders Association feared a "free for all" on the streets if certification was removed.

118. **Government's response:** In the light of our view of the application of the Services Directive to the retail sale of goods, this option has emerged as that which is closest to the route we must take in order to ensure compliance with the Directive. We appreciate that from the comments we have received and in comparison with other possible options set out in the consultation this option was not favoured either by local authorities, pedlars or most others. Indeed the pedlar respondents did not favour any of the options which would mean either transferring certification to local authorities, or removing certification requirements. In general they preferred to maintain the status quo in this respect. Nevertheless there was some appreciation in some quarters of possible benefits which might result from simplifying the situation in this way.

119. Many local authority respondents expressed a desire to have some means of controlling pedlars and yet, in those areas which have adopted the street trading regime and where no private legislation effectively limits pedlary to door-to-door trading by making other forms of pedlary subject to the street trading regime, we have seen no evidence of the need to control pedlars. Some have expressed a fear that a lack of certification will lead to a huge increase in pedlar numbers but, given that it is far from difficult or costly at present to obtain a pedlar's certificate, they have not as yet provided evidence to back that assertion or to justify why pedlars need to be controlled.

120. Others have mentioned a danger of obstruction or annoyance, neither of which appear to us to amount to a convincing case for additional regulation to provide for control nationally, notwithstanding that we acknowledge the concerns expressed by some local authorities as to the potential effect of unrestricted pedlary in particular areas at particular times. Wilful obstruction of the highway, for example, is already an offence under the Highways Act 1980.

121. In relation to consumer protection concerns, as previously mentioned, the Provision of Services Regulations 2009 require service providers, including pedlars, to provide their customers with certain information. This is, for example, to enable customers to seek redress in the case of the supply of shoddy goods. Other concerns relate to the supply of dangerous goods or goods which infringe copyright, both of which are the subject of existing legislation. Again, the information requirements of the Provision of Services Regulations 2009 should better enable enforcement where traders prove reluctant to provide contact details. Enforcement of the requirements of these Regulations is via powers available to, among others, local authorities, in Part 8 of the Enterprise Act 2002.

122. The Government is not therefore convinced that there is insufficient legislation or offences available to enable local authorities to tackle rogue trading in the street. Clarification of the exempted modes of trading should also assist effective enforcement. The case for controls on legitimate trade by pedlars is discussed later.

Additional Powers for Local Authorities to Enforce Street Trader Licensing

Question 18: Which of the options do you favour?

- (Option A Do Nothing – Prosecution through the courts will continue to be the only sanction available for street trading offences for those authorities with Private Acts.
- Option B: Provide local authority enforcement officers in England and Wales with powers to issue FPNs in respect of street trading offences.
- Option C: Provide local authority enforcement officers with powers of seizure, with forfeiture by order of the courts.
- Option D: Provide local authority enforcement officers in England and Wales with powers to issue FPNs and powers of seizure, with forfeiture by order of the Courts (i.e. a combination of options B and C)).

Local Authorities

- 81% option D
- Less than 1% option B
- Remainder did not comment.

Pedlars

123. All pedlars who responded chose option A.

Others

124. At least 80% of all others who commented supported option D.

**Question 19: Should local authority enforcement officers be given powers to:
issue fixed penalty notices
seize goods, with forfeiture by order of the court?**

Please give reasons for your answer.

Question 20: If you favour introducing new powers for local authority enforcement officers, can you provide evidence to support this view, particularly in terms of increasing the effectiveness of enforcement in this or other areas? If you do not support further powers, can you provide evidence to support this view?

125. All of the local authorities that responded to the consultation agreed that enforcement officers should be given powers to either issue FPNs or seize goods, and in some cases both for repeat offenders. They felt this would give them more control over street trading and pedlar activity and they view the currently limited powers available to local authority officers as a barrier to enforcement.

126. One local authority felt that councils should have a range of enforcement options so that they can react to the offence depending on severity. Swifter, more targeted enforcement would mean less waste of court time and less cost to both the local authorities and the courts.

127. Other reasons given in support of additional enforcement powers were that they would assist with consumer protection issues, remove nuisance, and reflect trading standards powers and ensure speedy action.

128. However, the evidence of the effectiveness of this approach was rather thin with only one of the local authorities with similar additional powers obtained under a private Bill providing a view. This was to the effect that it had been able to eliminate all pedlary from its streets. The effect of its private Act is that pedlary is only exempt from street trader licensing where it is carried out door to door.

129. Pedlars are extremely concerned, particularly in relation to the power to seize and forfeit goods, which they believe local authorities would use to simply harass pedlars, implying that they would do so even without cause. The cost of lost stock and being unable to trade and the inconvenience of formally appealing or arguing their case in court for the reinstatement of their goods would mean that pedlars would simply choose not to trade in an area where a local authority was known to use such powers. Pedlars maintain that they should have the right to be heard in court in respect of any alleged offence, before any sanction, such as a Fixed Penalty Notice, is applied.

130. NABMA said that they consistently argued that the seizure of goods on the spot would provide a much more effective means of dealing with the problems of unlawful street trading and pedlars. There is already precedent for this in London and elsewhere. They say the evidence collected by NABMA suggests that such action is effective. We have not seen this evidence.

Question 21: Is the list of offences in respect of Fixed Penalty Notices complete and correct? If not, please state which offences you would add or takeaway, and why.

131. Most local authorities were happy with the list of offences in respect of fixed penalty notices. Some suggested additions were:

- New offences need to be created in respect of size of any trolley utilised and if using a trolley, public liability insurance.
- Failing to act as a pedlar as outlined in terms of the certificate and the definition in the Act i.e. trading from the same spot or near the same spot, remaining stationary between sales, using an oversized trolley, etc.

- Obstruction of an authorised officer and failure to produce a street trading licence / consent on demand, or not giving local authority officer your name and address, as occurs with the Clean Neighbourhoods & Environment Act.
- Local authorities also issue street trading consents under the LG(MP)A 1982 as well as licences and these need to be covered by the offence provisions. This was suggested by 5 local authorities.
- Falsifying information or a certificate, although this may be more appropriately dealt with by prosecution rather than fixed penalty notice.
- One local authority commented that they would like to see the pedlars act repealed and pedlars to be dealt with under a revised LG(MP)A or similar. With this in mind they would also like powers to issue FPNs and/or seize goods (with forfeiture) for committing any offence under the legislation.
- Causing an obstruction on the highway to passers by.

Pedlars

132. Many pedlars who responded said they do not agree with FPNs and did not recognise the list of offences set out in the consultation document.

133. One respondent was concerned that local authorities could write what they like into their adopted LG(MP)A including the scale of fees, penalties, licences, and charges of their own devising. Others said local authorities chose to favour their own licensed street traders who were not so likely to lose their goods by seizure & forfeiture unless they were counterfeit and any fines are more likely to be on a lower scale than those aimed at less favoured pedlars.

134. Other respondents suggested similar additional offences to those suggested by local authorities. LACORS (now LGR) suggested looking at these as a separate exercise in a working group.

Question 22: At what levels do you think the fixed penalties should be set? Please give reasons for your answer.

135. Many local authorities felt that the fixed penalty notices should be set at the higher end of the scale set out in the consultation, to act as a deterrent. The general consensus was that the penalty should be reasonable for the severity of crime but must pose a deterrent and not too low such that illegal activity is seen as an acceptable overhead.

136. Most local authorities agreed that £60 - £300 is reasonable dependent on the offence.

Pedlars

137. Pedlars who responded did not agree with fixed penalty notices and believe that if an offence is “serious enough to warrant a fine then it serious enough to warrant a court room. One pedlar did suggest £100 as appropriate, but only for offences such as trading without a certificate, assigning a certificate to another, borrowing a certificate, failure to produce a certificate, or begging.

Others

138. All others who commented also agreed that fixed penalty notices should be set at a level that will ensure that the person receiving them acts under the law and in a responsible manner. Again the suggested levels of fine were between £75 - £300 depending on the nature of the offence.

139. **Government's response:** Respondents were clearly divided on the need for wider access to additional enforcement powers for local authorities. Apart from one local authority which already has these powers under a local Act (which also effectively restricts the activities of pedlars to door-to-door selling) we received no evidence as to the effectiveness of these powers in relation to street trading. Furthermore, although local authorities expressed their general desire for wider powers along these lines, citing the expense of establishing offences under the current regime, practical difficulties of having to involve the police and the lack of a deterrent when cases were taken to court, it was far from clear which trading practices were causing these difficulties. For example, were there general difficulties in identifying illegal street trading or were difficulties caused by the fact that traders were claiming to be certified pedlars but were not apparently trading as pedlars should but as street traders who should be licensed?

140. It was difficult, therefore, to establish the cause of local authority difficulties. If it is difficulty in gathering evidence that a person certified as a pedlar is not in fact trading within the definition of a pedlar, then this might be dealt with by a clearer definition of precisely what itinerant trading is exempt from the street trading regime. This should better enable the identification and establishment of illegal trading for which a street trading licence should have been obtained. Some of the comments received in respect the definition of a pedlar seemed to suggest this might be the case.

141. On the views and evidence we have so far received, the Government is not persuaded of the case for making these powers more widely available in respect of the street trader licensing regime. It is not our intention to remove these powers from those local authorities which already have them under private or local Acts of Parliament. As mentioned above, policy on enforcement powers is not driven by our need to ensure compliance with the Services Directive.

Unfair Competition

Question 23: Do you agree with the department’s general perception, as set out above. If not, please explain why.

(The relevant part of the Consultation document set out the Department’s view that pedlars trading within the definition of a pedlar in the Pedlars Act were not the chief cause for concern for local authorities, but that traders, perhaps trading with a pedlar’s certificate, who were not trading as pedlars should, were. We also explained that the

Department did not accept arguments to the effect that pedlars represented unfair competition to other traders, but acknowledged that those not behaving as pedlars who traded in the street without a street trading licence or consent where that was required were competing unfairly with those that were licensed to trade in substantially the same way. The Government's objective was to help local authorities deal with unfair and illegal trading while maintaining "genuine" pedlars' ability to trade.)

142. The majority of the local authorities agreed with the department's general perception that legitimate pedlars are not the cause of the problem.

143. Local authorities would like to see diversity promoted in trading practices and also clarity and flexibility in the enforcement of street trading provisions. They also wished to see regulations which are clear and proportionate to enable fair trading and fair competition while enabling them to tackle unfair trading practices.

144. One local authority did not agree because the Consultation Document assumes that there are lots of legitimate pedlars, whereas according to this authority in reality they are mostly street traders, who are using pedlars' certification as a loophole to trade in town centres despite Prohibited Street designations. This is why they say the definition of a pedlar needs to be tighter.

145. Other thoughts from local authorities were that pedlars can cause problems on the street and allowing unrestricted numbers unregulated access to trade in the street undermines the street trading regime.

146. One local authority said that pedlars definitely are the problem and that very few operate legitimately and comply with the terms of their certificates. They suggested the best way to deal with them is to repeal the Pedlars Act or introduce seizure powers.

147. Another said that pedlars were a nuisance in most city centres and acted illegally on the vast majority of occasions taking advantage of the lack of clarity in the law. They suggested that pedlars engaged in pestering and harassing visitors to their city centres.

Pedlars

148. One pedlar pointed out that almost all pedlars charge more on like-for-like items than a market trader or independently owned shop, and that they are not undercutting anyone. In issues of unfair competition this pedlar feels that pedlars are somewhere at the bottom of the list, and that supermarkets, pound shops, charity shops and imports from China are near the top.

Others

149. One view was that peddling in itself is not unfair competition; however when a pedlar does not operate within the law and stays static for long periods outside a retail unit selling similar, but more expensive products then this could be deemed as unfair competition.

150. One individual view was that the department has missed some important points with regards to comparative retail modes and that street markets are held periodically, often

on a certain weekday whilst pedlars operate every day. Street market stall holders pay an agreed fee which is many times that paid by a pedlar and are regulated by local authorities who can impose local conditions.

151. Another person felt that the department's perception is skewed in favour of the councils and is discriminatory towards pedlars.

Question 24: Do you agree that if provisions for more enforcement options against illegal street trading and a sufficient demarcation between legitimate pedlary and other street trading was established (along the lines discussed in the consultation document) that this would address the issues of concern to some local authorities in relation to unfair trading and competition? If not, please explain.

152. The majority of the local authorities agreed with this, and believed that this could provide extra protection for all. However some had concerns about illegal trading and excessive trading causing problems in areas of public access.

153. Councils which have their own Acts opposed this view. For example, Liverpool City Council would go against any suggestion that the Liverpool City Council Act 2006 should be repealed as they felt it was much needed, highly effective and had greatly improved the public's experience of visiting Liverpool.

Pedlars

154. Many of the pedlars that responded did not think that more enforcement provisions would resolve the issues of the local authorities. They don't agree with the enforcement provisions and believe that the local authorities will abuse these powers.

155. Pedlars believe that local authorities find it difficult to interpret the law and differentiate between street trading and pedlary even though the demarcation exists within case law and the Pedlars Act. Therefore they suggest that a more complete and comprehensive guidance based on case law be raised for local authorities. In addition they felt that neither the consultation, nor the Durham Report, provided evidence about the issue in relation to unfair trading and competition. It was commented that BIS is confusing law with competition and "being unfair". The term "unfair" is emotive and reading the BIS consultation may lead to the thinking that pedlary is unfair and that they pedlars set out to compete unlawfully with other business. They go on to say that "BIS is there for the important understanding that business is by its very nature competitive, leads to consumer choice and a fair market price."

Others

156. The main concern was that the proposals, as they stood, did not address the issue of unfair competition. LACORS (now LGR) felt that consideration needed to be given to how this framework linked with areas where councils and residents have agreed to set up No Cold Calling Zones or No Cold Calling Control Zones.

157. **Government's response:** Our general view that pedlars acting in accordance with the current definition of pedlary are not, for the most part, the cause of local authority concerns over illegal street trading appears to be born out in good part by the responses to this section. Although there were some notable views to the contrary, we believe there is a fair degree of support for the view that establishing a more clearly defined demarcation between practices which might be considered legitimate pedlary and other street trading should enable more effective and consistent enforcement of street trading regimes while enabling pedlars to go about their trade substantially as they wish. Recent amendments to provisions in private Bills which some local authorities have promoted and are promoting through Parliament seems to be a clear acknowledgement, at least by those authorities, that this is the case.

158. None of the responses to the consultation gave a clear argument as to why greater restrictions on pedlary on grounds of unfair competition might be justified. Moreover, economic reasons such as the protection of competitors do not, in line with European Court of Justice case law, qualify as a justification for the purposes of the relevant provisions of the Services Directive.

Introducing the Ability to Restrict Pedlar Trading in Defined Circumstances

Question 25: Do you agree that, in some circumstances, restrictions on the number of legitimate pedlars in specified areas and at specified times are justifiable? If not please explain why you do not agree.

159. The majority of local authorities agreed that restrictions on the number of pedlars should apply in some circumstances. Especially at times when large numbers of pedlars converge on a town centre and when issues can arise relating to over-crowding during certain times of the year, for example Christmas and Easter. Restrictions would enable councils to regulate numbers in popular areas such as tourist locations or busy shopping streets where it is claimed that congestion can cause a danger to the public.

160. However, some local authorities felt that there was no need to limit numbers, and one local authority suggested that the numbers would be taken care of by repealing the Pedlars Act (and, presumably, removing the exemption from the street trading regime). Another major and practical concern was related to enforcement and being able to track numbers on any given occasion. It was felt that this would unnecessarily complicate the administration and enforcement of the system, as it would be difficult to constantly monitor an area.

161. Pedlars on the whole did not agree that restrictions on the numbers of pedlars in specified areas and at specified times are justifiable. They say that when there are events and festivals in a town centre there is enough business for everyone. Some did acknowledge that town centres around Christmas can have too many pedlars but that this is probably “down to bad management on the town centre’s part”.

162. Again, pedlars expressed considerable wariness in respect of local authorities’ motivation for applying any controls, and suspect that such controls would be abused.

163. Other respondents generally agreed with the proposal, as long as certain local conditions were met. LACORS (now LGR) commented that it enables councils to make local choices, and this could be utilised to ensure that pedlars do not adversely impact other businesses or visitors to the town centre. This could be in the form of numbers, time and location as examples. They also said that such restrictions work well with charitable street collectors already dealt with within councils.

164. **Government's Response:** The Government accepts that in some circumstances the presence of numbers of pedlars might give cause for genuine concerns as to the safety of the public. As mentioned in the general section above on the impact of the Services Directive on authorisation schemes as they might be applied to pedlars (Page 9), future restrictions of this type, including local restrictions, must be justifiable under the Directive. In relation to seeking to restrict the activities of temporary providers this effectively amounts to being able to justify the case for imposing restrictions on the ability of pedlars to trade on grounds of public safety. Furthermore, such a case is unlikely to be justified where other legislation, such as that preventing wilful obstruction of the highway might be utilised to deal with the problem adequately. As regards established pedlars, as well as public safety, we will seek views on whether the ability to place restrictions on their activities is needed for any other reason which constitutes a permissible justification under the Services Directive. We will also seek views on whether having one regime for temporary pedlars and another for all other pedlars would be workable in practice.

165. We shall consult formally on any proposals we are persuaded are needed and are justified in accordance with the Directive to provide for the adoption by local authorities of powers to limit pedlar activity. As mentioned earlier, we will need to consider the extent to which any such proposals can be included in the regulations making the changes necessitated by the Services Directive.

Question 26: Do you agree that the list above (set out below for reference) illustrates the circumstances under which restriction on numbers is justifiable? Do you disagree with any of the listed circumstances, if so why? Would you add any circumstances to the list, if so, which and why?

- *Peak periods of seasonal activity;*
- *Specific locations which have a history of attracting unreasonable numbers of pedlars - summer season on sea fronts for example;*
- *In areas of pedestrian congestion where street trading is already prohibited e.g. historic town centres during the tourist season;*
- *During special annual or occasional local events with a history of attracting unreasonable numbers of pedlars e.g. fairs, county shows, large sporting events, local festivals etc;*
- *In streets in which static street trading is already prohibited, assuming the rationale for prohibiting static street trading applies equally to trading as a pedlar.*

166. More than 25 of the local authorities that responded agreed with the listed circumstances.

167. Westminster City Council pointed out that the unique nature of the numerous iconic sites in Westminster however, means that unreasonable numbers of itinerant traders are not attracted seasonally but throughout the year. It is for this reason that Parliament has approved the current restrictions which have been placed on pedlars and street traders in Westminster.

168. Other suggestions for circumstances under which restrictions on pedlar numbers could be justified were:

- i) In streets that are mass evacuation routes or emergency vehicle routes where excessive numbers of pedlars could cause a hazardous obstruction.
- ii) In residential areas where there is a will from residents to restrict this activity – this may either be on the grounds of nuisance or for the prevention of crime, and would apply to pedlars of goods and services.
- iii) In consent streets where the number of consents is already restricted but not prohibited.
- iv) On specific days of the week. This would enable local authorities to restrict the number of traders on peak trading such as Saturdays.
- v) To restrict pedlars to a reasonable distance away from Craft Fairs and Markets who may well have paid a large amount of money to trade in a specific area.

169. One Council argued that the list also needs to be drawn widely enough to allow for all local circumstances to be taken into account. It should also make provisions for concerts, theatre performances, charitable, social and cultural events.

170. One local authority who disagreed said that this would unnecessarily complicate the administration and enforcement of the system.

171. Liverpool council said that it would be over-complicated and unrealistic to apply restricted numbers and circumstances.

172. Pedlars disagreed with the restrictions and one pedlar commented that they had never seen a genuine case of the number of pedlars causing a risk to public, and that it is very easy for councils to say 'No' to anything. This pedlar also asked who they should appeal to when a council says no.

173. Comments from others were similar to those of the local authorities. For example, restrictions on pedlar numbers should apply where an excessive number might cause Health and Safety concerns and where large numbers of trolleys were being manoeuvred in a small area and/or with large crowds.

174. LACORS (now LGR) agreed but said that discussion with a working group is necessary to ensure all operational issues have been properly addressed.

175. **Government's Response:** See the response to Questions 23 to 25. It seems clear that some of the circumstances suggested above would be unlikely to satisfy the grounds in the Services Directive for justification. We would hope to be able to clarify the circumstances in which restriction on numbers might be justified, but what does seem clear is, in the absence of firm evidence justifying general restrictions, they are unlikely to be permitted. We shall engage with local authorities and others on this issue in due course.

Question 27: Do you have any observations in relation to the ideas aired in the final paragraph above on methodology and notice? (i.e. practical arrangements for local restrictions on pedlary)

176. The main concern of the local authorities was that day licences would be impractical and burdensome in terms of administration.

177. One local authority commented that this will complicate the administration and enforcement. In the present climate when Councils are have to make serious cuts in the level of staff, who is going to fund this work?

178. Another commented that restrictions can be justified for example at Christmas periods or other times of peak congestion e.g. continental street markets, also whether they are required is dependent on the physical size of the area e.g. width of street and proximity of entrances to shops and not just footfall of shoppers.

179. In Leeds they designate all streets as consent streets; the only prohibited street is a private street accessing the city railway station. Glasgow City Council felt that by restricting the definition of a pedlar to door-to-door sales, any other activity would fall within the ambit of street trading. In Scotland a temporary street trader's licence may be granted. However, if pedlar activity is not restricted as they suggest, they do not think that it should be permissible for a pedlar to apply for a pedlar's certificate on the day on which they intend to use it and issuing authorities should be given an opportunity to undertake thorough investigations into an applicant.

180. Many local authorities agreed that any restrictions on pedlars should be made known in advance. Here are some suggestions on how this could work:

- Notices displayed in the specific streets in advance
- A database of pedlars could be used so notifications could be sent to them along with publicising on the authorities own websites of restrictions etc.
- Each council should have a policy available on their website / reception desk / licence offices and there should be a clear application process with clear terms and conditions, and information on restricted areas.
- Implement an advance on-line application process, as issuing day licences on the actual day would be difficult to support / resource.
- Make it a condition in a pedlar's certificate to contact in advance a local authority in whose area they intend to trade e.g. 28 days advance notice would allow the LA to determine whether additional licences would be required.

- Applications for a restricted number of day licences for events or festivals could be made via a national website on a first served basis. These applications could be made in advance for events which are advertised on the website. Enforcement officers could then have a list of pedlars to expect on the day, making the removal of unauthorised pedlars easier.

181. One pedlar commented that these ideas are very good, however they were concerned that in practice the answer would always be 'no'.

182. Another pedlar commented that the idea does not appear to have a basis in any evidence that a problem actually exists and anecdotal claims by local authorities or others are not sufficient.

183. One pedlar commented that they have never had a problem with too many pedlars being in the same place at the same time. This respondent also said that pedlars can judge for themselves if there are too many of them in a certain area, and that it would not benefit any of them to try to trade in an over crowded area. They ended by saying that to involve local authorities in this matter is completely unnecessary and would over complicate the situation.

184. One liquor licensing officer pointed out that as pedlar's certificates are renewable after 12 months and most events or reasons for restricting pedlars are usually planned in advance, it would seem reasonable that a schedule of restricted dates could be issued to pedlars for the coming year upon certificate application / issue.

185. One town centre manager said that they would hand a letter of intent for day licenses to limit the number of pedlars within a certain length of time before the event. They would also implement a day license to allow for weather changes on a first come first served basis. To enable monitoring and enforcement a simple daily booking sheet could be e-mailed to all regulatory officers showing the name and the license number of those Pedlars issued a day license. Any Pedlar without the day license would be asked to leave.

186. Another town centre manager also suggested that one could go one step further if needed: to ensure that individuals do not take all the licenses on a daily basis there should be a clause limiting a pedlar to a maximum number of daily licenses within a set period. If there are still daily licenses available by a set time in the day then they could be offered to a pedlar who has exceeded their limit of consecutive licenses.

187. **Government's Response:** We will consider further whether powers are needed and can be justified in accordance with the Services Directive, and whether the conferral of these powers can be included in the regulations making the amendments necessitated by the Services Directive. What powers are needed will be the subject of discussion with local authorities and others. This will include discussion about such issues as the possible justification(s) for imposing restrictions on pedlars, the types of restrictions that need to be imposed and workability of any proposed regime. Any such regime would be likely to impose a degree of cost on those local authorities where these controls are considered important and who would, therefore, choose to adopt them. These costs would clearly

need to be taken into account by those local authorities as they consider their overall local priorities.

Street Trading Appeals to the Secretary of State

Question 28: Should street trading appeals in London be determined by the magistrates' court or the secretary of state? Please give reasons for your answer.

188. The local authorities who replied to this question unanimously agreed that street trading appeals should be determined by local Magistrates' Courts. The main reasons were that it was proportionate and consistent with other well established and effective licensing appeal regimes. Magistrates' Courts are used to dealing with such appeals and it provides for a consistent approach nationally.

189. No local authority disagreed but one did say that appeals should be limited to Magistrates Court with no further appeal to the Crown Court. They also suggested that those matters which are subject to appeal should be reviewed, as some are inappropriate for determination by Magistrates' Courts.

190. Most other respondents such as the town centre managers also agreed that Magistrates Courts were best placed to deal with street trading appeals as they are more than capable of analysing the arguments. The rest had no comments.

191. LACORS (LGR) had no comments other than to say that any appeal system needs to be proportionate and consistent throughout the UK.

192. **Government's Response:** The current City of Westminster Bill will replace the relevant appeal provisions allowing appeals to the Secretary of State in respect of street trader licensing in Westminster with an appeal to magistrates. We will seek to remove (if possible) or encourage the removal of the similar provisions in the London Local Authorities Act in due course.

Services Directive – removal of pedlars of services only from the certification requirement.

Question 29: If you are aware of any evidence to suggest that the conclusions set out above do not reflect the actual position either in respect of our perceptions of numbers of pedlars of services only or in respect of our understanding of the requirements of the services directive, please provide it. Note that a pedlar of goods and services will need to be certified in order to trade as a pedlar of goods.

Local Authorities

193. Some local authorities are of the opinion that, as the Services Directive has instructed Member States to remove any authorisation which might act as a deterrent to service providers, there is very little point in arguing against it.

194. One said that clear definition of “services” was needed, and that removing the requirement for certification of pedlars of services without such a definition could lead to argument and confusion concerning what is a service. Moreover, unrestricted numbers of pedlars of services could cause substantial problems for enforcement officers engaged in regulation of pedlars of goods.

195. Others did not think that there are a substantial number of pedlars offering services only - most pedlars only sell goods. Another suggested that services provided by pedlars going from door to door should be covered by the Cancellation of Contracts made in a Consumers Home or Place of Work etc Regulations 2008.

196. Another local authority mentioned that there are many organisations that promote their services on the street, (e.g. energy suppliers, breakdown assistance suppliers, etc), who do not purport to be pedlars and are not selling articles so do not come under the definition of street trading under the LG(MP)A either. However they still have a detrimental impact on the street and the visitor experience.

197. One local authority was concerned that although street traders who provide a service will continue to require to be licensed, pedlars who provide a service will not, and this may create a loophole which may be exploited. Another said that pedlars of services should be subject to street trading regulation, and that is justified under the Services Directive because of the impact they can have on public safety and highway management.

198. The Pedlars.info response commented that a full audit of Pedlars of services has never been carried out and that only 1% of pedlars were contacted via the Durham Report. They suggested that there is no evidence that there are no Pedlars of services who could now become uncertified and possibly illegal depending on local legislation in the areas in which they have always traded or now choose to trade.

199. One pedlar who agreed with Pedlars.info added that “this issue has been moved towards being determined arbitrarily during this consultation and on the basis “of no evidence” which suggests further review in both domestic and European courts. HMG has not made proportionate response and there is thus “detriment” to upwards of more than 48 million people”

200. The main point emerging from the comments of others was the need for a clear definition of what is a service? One town centre manager said that they have had ‘paint-ball companies’ come into the town centre set up a stall on wheels and work across a 15 metre wide street with four/five operators each using a pedlar’s license. Also the RAC/AA can also bring 3 or 4 people to operate in the same street. They anticipate that if the controls are tightened on the pedlars of goods then there will be a move into pedlars of services which will result in the pushing of the boundaries of what is a service.

<p>201. <u>Government’s Response:</u> As a result of the changes we will be taking forward to ensure compliance with the Services Directive no pedlars will be subject to the certification regime.</p>

Draft Guidance on the Applicability of the Current Legislation

Question 30: Is the checklist at the front of the guidance an adequate one-page summary detailing what legal street selling looks like? Please give reasons for your answer including anything you would like to see added or removed.

202. The majority of local authority respondents thought that the check-list is an adequate one-page summary that would meet the needs of Local Authorities and pedlars. Some said that it was consistent with the proposed legislative changes and current case law.

203. Others felt that the check-list would allow for a degree of discretion amongst enforcement agencies (on issues such as trolley size) which is consistent with the findings of the courts that each situation should be judged on its own particular circumstances.

204. Another commented that the checklist provided a clear illustration of the current difficulty in defining the difference between pedlar activity and street trading.

205. Some were concerned that the format of the checklist does not accurately reflect the complexity of the situation. While a simple approach is preferable, it does not make any reference to the detail contained in the full guidance document. The fear is that the checklist will be read and quoted in isolation which could lead to further conflict.

Trolley size and moving around.

206. Some local authorities said that they would like to see a more definitive description of trolley size. There were concerns over what is meant by reasonably sized, as what is reasonably sized to one person may not be to another person. This should be clearly specified in the guidance and not left to the individual to decide.

207. There was also comment that the lawful pedlary column and the unlawful pedlary column contradict one another because one says you can use a trolley while the other states that large trolleys should not be used. The Pedlars Act envisages a pedlar carrying his/her goods (one of the most important differences between a street trader and a pedlar).

208. One commented that use of trolley and the interpretation of moving around are enabling and encouraging 'pedlars' to act unlawfully.

209. Canterbury Council observed that there was no guidance on "distance". This has major implications in a small congested city such as Canterbury. Size of trolley is also very problematic and difficult to define; what might fit one street would not fit another.

210. Others argued for less ambiguity, for example the word "should" is unadvisable as it encourages ambiguity. In addition the word "large" should have better definition.

Other Local Authority comments

211. One Local Authority observed that pedlars target high footfall areas e.g. outside the entrance to a shopping centre and move only a few feet to and from the same spot. This is unfair competition for those businesses in the vicinity.

212. One LA commented that people of other nationalities who do not speak and read English may have problems understanding the guidance.

213. Another LA commented that the guidance does not reflect the situation being experienced in their area (York). For example shoddy and dangerous goods being sold, harassment of the public, trade being taken away from the retailers, street pedlars detract from the shopping on offer in the town centre.

214. One Local Authority observed that the guidance does not deal with “legal street selling” (which includes pedlars, street traders with licences and consents, and (in areas where street trading is not regulated) any individual with or without an authorisation who chooses to trade there).

215. One Local Authority commented that if the guidance is an attempt to summarise pedlary (rather than legal street trading), all it does is summarise many years of (often conflicting) complex case law it achieves very little and in any event carries no weight.

216. Another observed that the correct way to clarify what a pedlar can and cannot do would be to prescribe, in primary legislation, the precise activities that pedlary comprises (including how long a pedlar could remain in one area).

217. Some pedlars commented that the checklist is misleading and fails to take into account key points of case law. A pedlar does not have to be continuously moving between sales so as to show they are looking for their customers, and the BIS interpretation relies on one case, namely *Chichester v Woods*. In this case there is confusion because an order 57 rule was not followed up in spite of it being ordered. There are several other cases where the judgements have stated a pedlar can stop other than for reasons of sale which have not been taken into consideration when compiling the checklist and draft guidance. Pedlars emphasised that Guidance must reflect case law precedents.

218. Some pedlars proposed that BIS should review all the case law precedents and incorporate the current lawful activities of pedlars into the guidance. The draft contains many errors and is misleading to local authorities and Pedlars alike as to what those current lawful activities are.

219. Some also commented that the statement “You must move to trade - keeping a reasonable distance from your last position” should be more specific as this is also greatly misinterpreted.

220. One pedlar highlighted that biggest problem is when a pedlar does not go town to town or street to street at all but stays in one spot all the time. He commented that if a pedlar does that, then he/she must be prosecuted.

221. Both pedlars and Local Authorities noted that the checklist does not make reference to those places with Private Acts, or current Bills which affect a pedlar’s lawful activities.

222. Local Authorities and Town Centre managers felt that there is need to adjust the wording to include “moving from street to street” and also to make it clear that moving up and down the same street is not moving place to place and is therefore unlawful. On the other hand, some pedlars maintain that there is no case law stating that you must trade from street to street.

223. LACORS (now LGR) believe that guidance would be better discussed and agreed by a working group, however they would like to see a simple “How To” produced by the Government for use by street traders and pedlars.

Question 31: Do you think the draft guidance meets the needs of the target audience, i.e. enforcers and traders, including pedlars? Please give reasons for your answers.

224. Most local authorities welcomed any guidance that would assist in the interpretation of the current legislation in relation to pedlars since this would be of benefit to both traders and enforcement officers and would be key to achieving a degree of uniformity of approach to street trading enforcement. However, others felt that guidance was only useful for background information, that this was not a matter for which guidance was appropriate and that it should be dealt with by primary legislation to clear up any ambiguity, thus providing consistency throughout the country.

225. Some pedlars were strongly of the view that the draft guidance did not adequately reflect relevant case law and felt that, in some respects it was not accurate and might lead to further problems. They commented that the guidance should be re-written and re-formatted with the co-operation of pedlars “with legal opinion”. They believe the draft portrayed a lack of understanding about the lawful activities of a pedlar which illustrated their broader view that the entire consultation was incompetent. Nevertheless, we are aware that some pedlars believe clear guidance would help in many instances where they believe they are wrongly tackled by local authorities.

Question 32: Do you have suggestions for amendments to the guidance? If so, please specify how the guidance might be reformatted, added or subtracted from and why.

226. Very few local authorities had suggestions for specific amendments to the guidance. Several thought that there should be a fresh consultation on the guidance once it had been decided what the legislation is going to be.

227. Another suggested that the sections that refer to specific case law and legislation should be removed. This is because as case law and legislation develops, the information contained in the guidance could easily become outdated.

228. One Local Authority suggested that the guidance should be made available in various formats such as electronic, hard copy and copy for the visually impaired.

229. Further responses can be found at annex A in the summary of responses.

230. **Government's Response:** In the light of our decision to take forward changes in order to ensure compliance with the Services Directive as soon as we can, which will be accompanied by guidance for business, we have decided not to proceed with developing guidance on the current regime. The very helpful views and comments we received on our draft will help to inform our work ahead, particularly as we consider the new exemption from street trading regimes for pedlars.

Question 33: If you have any other comments or observations, in particular any information on possible costs relating to the options (see impact assessment), we are happy to receive them as well.

231. The main point raised here by local authorities who responded, was that fees and charges should be at an appropriate level to incorporate some of the enforcement costs and also to maintain national database.

Additional comments from local authorities were:

- "Stipulations to pedlars must include info on - not stopping for more than 5 minutes; moving on 200 meters; cannot return within 50 meters of other pedlar; must display their certificates."
- "We would like one Act."
- "Use plastic credit card type licences which will last longer than card. Start up costs will be more than guidance suggest - £100 cert fee might help here."
- "New provisions should be self-financing through set level of fees. Local authorities should set their own fee levels."
- Would welcome another opportunity to respond more fully to any proposals.

232. Others commented that there should be a central website (e.g. direct.gov.uk/pedlars) where members of the public can verify a Pedlar's certificate. After searching for a certificate number, the website should show the Pedlar's name and photo, along with the name and contact details for the local Police station who issued the certificate and any other relevant information. The purpose of the website would be to reassure members of the public that a Pedlar is legally permitted to carry out his trade.

233. Many households now have access to the Internet, and an increasing number have the Internet available on their mobile phone. If a member of the public was interested in purchasing something from a Pedlar, but wanted to check their legitimacy, they could ask the Pedlar to come back in 10 minutes to give them a chance to look up their details online.

234. **Government's Response:** We welcome and have noted all comments received in response to our consultation. Given that at the time of consulting it was not clear which of the possible options aired would be the preferred way ahead, as well as our intention then to consult further, it is not surprising that we did not receive any substantive additional information in relation to costs and benefits. We will be formulating a new Impact Assessment in the light of our more recent conclusions on the action we now consider necessary. This will be included in our consultation on draft regulations in due course.

Next steps

235. We will be doing further work to analyse the provisions of national and local street trader licensing legislation to identify elements which will need to be brought into line with the requirements of the Services Directive.

236. We will discuss the formulation of the exemption from the street trader regime for pedlars with stakeholders, including pedlars and local authorities.

237. We will consider further whether specific powers to limit pedlar activity in specific circumstances are needed and can be justified in accordance with the Services Directive and will discuss this with local authorities and others. This will include the possible justification(s) for imposing restrictions on pedlars, the types of restrictions, the workability of any proposed regime and whether the conferral of any such powers can be included in the regulations making the amendments necessitated by the Services Directive.

238. The devolved administrations will be considering the extent to which changes are needed to the Civic Government (Scotland) Act 1982 and the Street Trading Act (Northern Ireland) 2001

239. We will discuss with the devolved administrations coordinating changes to the respective legislation to ensure compliance with the Directive across the UK.

240. We will consult on draft regulations designed to ensure that the Services Directive is complied with in England and Wales, and if acceptable to the devolved administrations, across the UK, including developing a full Impact Assessment for England and Wales.

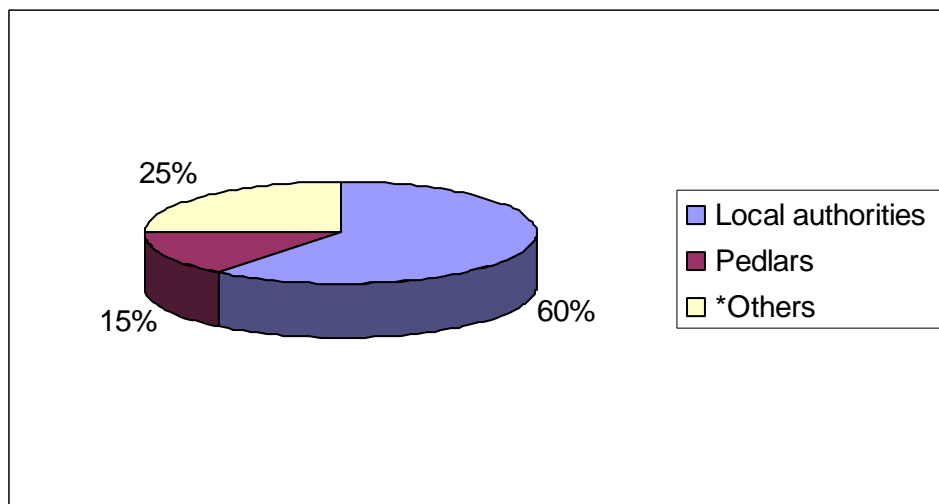
Annex A

Summary of Responses to the joint consultation on modernising Street Trading and Pedlar Legislation, and on draft guidance on the current regime

Statistical analysis of responses

87 responses were received. A list of respondents is provided at Annex B and all of the responses will be published on the BIS website. For the purposes of the summary the respondents have been grouped into 3 categories: local authorities, pedlars and others. The number of responses for each category was as follows:

Local authorities	54
Pedlars	13
*Others	22



*(This includes, LACORS (now LGR), individuals not identified as pedlars, town centre managers, police, ACPO, Trading Standards offices, NABMA, lawyers etc.)

Summary of responses to the consultation questions

Certification Process

Question 1: Do you agree that the definition is in need of updating and clarifying? If not, please provide your reasons.

Local Authorities

All the local authorities responding agreed that the definition of “pedlar” needs updating and the whole area looked into. It was felt that the current Act is outdated and now needs to reflect modern day trading in the 21st century.

Many illegal street traders were using the Act in order to evade street trading law. Trying to enforce the legislation was costly and often a waste of enforcement officers time.

Glasgow City Council felt that it was no longer clear in Scotland where pedlary ended and street trading began. In any case, pedlary should be limited to door to door sales.

Belfast City Council agreed that updating the definition of “pedlar” was necessary but added that they were concerned that they had not been directly consulted by BIS on the matter. Street trading there falls under the Street Trading Act Northern Ireland and this should be taken into account when considering any changes to the Pedlars Act.

Pedlars

All but one of the pedlars that responded to this question said that definition of a pedlar is NOT in need of updating and clarifying. Pedlars generally feel the definition does not need to be altered and that the definition of a pedlar is as applicable today as when the Acts were first introduced. They say that pedlars have relied on the Pedlars Act for 138 years because it is good law and should not be sullied by the fact of its age. They feel that such logic undermines Parliament itself. Below are their main reasons and arguments for this disagreement:

With regards to the definition of a pedlar “there has never been any dispute or misunderstanding regarding what is a pedlar. The Pedlars Acts may well be over 100 years old, but many of our core Acts that govern how we live today are much older than this.” They point out that recent High Court cases have centred on what a pedlar may or may not do to avoid being prosecuted for street trading, not the definition of a pedlar itself. They also noted that the Pedlars Acts may well use some phrases that sound dated or include some trades that would not be seen today, but the core activities remain relevant.

They feel that the statement “travels and trades on foot and goes from town to town or to other men’s houses, carrying to sell or exposing for sale” defines most clearly how most modern day pedlars work today, and the term “without horse or other beast bearing or drawing burden”, has been universally understood to mean, without locomotion and with ones own effort in carrying their goods as a pedestrian on their persons or by means of assistance using a small appendage.

One pedlar said that they did not feel the terms and definitions of the pedlars act require further explanation, as the current act clearly defines a pedlar as someone who sells things. They went on to say that the reason there are very few restrictions included in the act is because they are not meant to be there, and that if the lawmakers of the time had intended 'town to town', 'street to street' to mean a pedlar may not stop moving as he trades they would simply have said that. The pedlars act is as clear as it needs to be, that is why it is separate to the street trading laws passed decades later, and they did not supersede it.

Another pedlar commented that there is a difference between definition and clarification. They said that clarification has been the issue in many High Court cases and from these case law has been formulated which certainly clarifies what a pedlar is permitted or not permitted to do. Any clarification if needed can be as per the Private Legislation currently going through Parliament incorporated through amendments to the Local Government (MP) Act taking into consideration case law.

Pedlars also felt that the description of a pedlar should not be altered because it gives by example some of the trades that existed in 1871; they say that was never intended to be an exhaustive list, and "the insertion of 'or other person' makes allowance for any other person such as, in contemporary life, a balloon twister, an artist etc. It grants a liberty and the freedom to do anything by way of a chosen trade or a 'yet to be evolved' trade."

They feel the difficulty created by the LG(MP)A concerns not the definition of a pedlar but the allowable activities of a pedlar, they claim this is so because the LG(MP)A exempts persons acting as a pedlar being answerable to local authorities. In Court the local authority is obliged to prove that the person was not acting as a pedlar if they are to succeed in an allegation of illegal street trading. The essential yardstick for measuring is not some intellectual abstraction but is grounded in the regulation of a Licensed Static Trader whose fixed pitch is outlined on the street, who occupies that pitch for 365 days a year up to 10 hours a day, and receives services provided by the local authority in exchange for a licence fee.

One pedlar agreed that the definition did need updating but did not provide any further views as to why.

Others

There was general consensus amongst the other respondents to the consultation that there was a need for updating the definition of "pedlar".

The Federation of Small Businesses (FSB) agreed that the definition needs updating and clarifying.

LACORS said that the law is out dated and pointed out that modern street trading now included areas such as energy sales, mobile phone traders and cold callers.

The Magistrates Association, The Association of Police Chief Officers (ACPO), Avon and Somerset Police and the National Market Traders Association also agreed that the definition needs updating. The National Association of British Market Authorities (NABMA) said that a revised definition of pedlary "is a priority".

Sharpe Pritchard (a legal firm) restricted their comments to those parts of the consultation which could pertain to private legislation but noted that in questions 1-4 the emphasis was in keeping a regime of trading on the street and not house to house.

An individual respondent took the view that the department was aiming to amend the Pedlars Act simply because of its age. They sought evidence to the effect that laws need to be updated based on their inception date.

The same individual did not agree that any documented evidence was available to the effect that the definition of a pedlar is in need of updating, nor that there are issues with interpretation.

Question 2: Do you think anything should be taken out or added to the list and why?

Local Authorities

Some local authorities were content with the list but a greater number wanted specific phrases to be better defined/changed altogether and new ones added.

One of the most commonly commented-on phrases in respect of our suggestions was "reasonable distance". This phrase was thought to be far too vague and in need of clarification.

The other most commonly cited phrase for clarification was "small means of transporting goods". It was felt that this needed very clear guidelines and the suggested formulation to be too ambiguous.

Trolley use in public areas by pedlars is an ongoing issue for many local authorities. It is felt that they block the highways and present a potential health safety risk to the public. Some Local authorities thought they should be stopped from entering public areas altogether. Other local authorities thought that pedlars should carry goods at all times.

Several Local authorities thought it should be emphasised in the guidance that pedlars must not use trolleys as a makeshift stall. Belfast City Council was concerned that the possible suggested definition of a trolley might allow it to become a stall and a pedlar would in effect become a "mobile street trader" in competition with legitimate mobile street traders. The licensing for these street traders is dealt with in the Street Trading Act Northern Ireland.

Knowlsey Borough Council pointed to the London Borough of Croydon V William Burdon 2002 case for reference when looking at the guidance on definition of transportation of goods.

Another area in need of defining was that of the need for pedlars to continually move around whilst trading. Some comments here were:

- Redefine phrase "must move around to trade"
- "Must move around" this could result in pedlars circling
- "should stay still" to be changed to "must stay still" - it's important to specify how long a pedlar can stay still
- Delete "standing still between sales" this is more akin to street trading
- Clarify definition 'between sales positions; Substitute "must " for "should" in moving between two spots

Other local authority comments on Question 2 included:

- Any new definition of pedlar must be "future proofed" to cover new innovations and make sure they are caught. This includes other types of trade such as charity sign ups ("chuggers") and energy suppliers
- The meaning of "itinerant" should be clearer as many pedlars are not in fact itinerant.
- Medway Council asked that selling hot food be included in the list as to prepare the food requires standing still. Medway Council introduced a private bill to combat this activity as previously prosecutions under illegal street trading were costly and time consuming.
- Pedlars should not sell similar goods to other outlets within a certain distance
- It should be stipulated that there should be some distance between pedlars and other street traders sales pitches
- Pedlars should not return to an area within 24 hours

Pedlars

Pedlars felt that the list was anecdotal and not fit for purpose as in their opinion it does not reflect the intentions of Parliament when the Act was written and it is not based on law. They said "The list isn't worth the paper it is written on!" They did however agree that a pedlar must be a pedestrian, but suggested that case law is referred to when compiling a list for clarification purposes.

One response from a group of pedlars was that "Nowhere in the document is there reference to the historic origins of certified pedlary legislation, nor of local authority street trading regulation for licensed traders and without this context the reader is unable to compare nor reasonably consider the allowable activities of pedlars." They went on to give a list of Statute and case law summarising the lawful activities of pedlars, this list can be found in the full responses published on the BIS website.

Most pedlars strongly disagreed with any future additions to the definition of a pedlar as someone who does not stop moving until they sell something. One pedlar felt that it was absurd that a person would shuffle around all day long simply so council officials do not confuse them with a street trader.

Another pedlar claimed that it is very hard to sell anything whilst on the move, as the public may assume you are moving off and not selling. Also they would let the public see their wares rather than shouting as they walked along. This pedlar also said that they felt humiliated many a time by being told to 'move on , move on', and also commented that rather than serve public interest this is used as a tool by people in authority who would rather pedlars didn't exist. They went onto say "I operate in this manner: I visit towns all over the country, when in a town I make sure that every 15 minutes I move a reasonable

distance from the spot I was last stood, but please note that I certainly won't make a point of moving if I have a queue of people wanting to buy my wares!"

One pedlar who agreed that a pedlar should not have a fixed position for selling as this would make them a street trader, did however say it would also be very tiring for a pedlar to move constantly around. They considered the current norm for pedlars to be allowed to stand in the same position for no more than 15 minutes was appropriate, as it worked well however it should be clarified so that there is no confusion. They also agreed that the next sales position should then be a reasonable distance from their last sales position.

With regards to a small means of transporting goods one pedlar who agreed said that this should be encouraged, so long as goods can be displayed as this it makes it easier to sell them.

One pedlar who both agreed and disagreed with the list justified their answer by saying "the distinction introduced by the authors of this consultation lets in a head capable of a simple prosecution of a pedlar. This gambit is typical of the whole consultation. Question 2 should not be posed in terms of "Option B" as "the list" is not presented in the Pedlars Act as definition only as a list of descriptive terms, and it is for a court of law to apply interpretation. The pre-condition set out by this question has been pre-determined by the department on pages 42- 43 of the "consultation" 8.1 - 8.3 with the ludicrous amalgam in 8.3: "that this criteria is comprehensive. When a person is acting as a pedlar or a street trader", this is not a distinction in law, the Local Government Miscellaneous Provisions Act (LG(MP)A) 1982 states that a pedlar is exempt from street trader regulation. The distinction is therefore false and the criteria is not comprehensive because it ignores court Order 57 Rule 1."

They also say that "the "list" format is an attempt to codify law as purely functional, whereas there is history to culture and custom: with nature not yet described as entirely mechanistic - so this question is thus inappropriate, entirely wrong and redundant."

Others

Avon and Somerset Police said that "reasonable distance" is too ambiguous. The Magistrates Association said that "must keep moving" except when making a sale is unfair and should be changed. LACORS felt that any future definitions should be "future proofed" and that overall this area should be considered in a working group.

An individual questioned the need to change any element of the existing definition and raised a series of questions seeking clarity on the list in the consultation document and suggesting the entire list should be re-evaluated.

Question 3: Do you think the permitted size of a trolley should be set out in the definition. Please provide reasons for your answer and an indication of any size you think appropriate.

Local Authorities

A large number of the responses from local authorities called for specifications on trolley size and favoured smaller dimensions. Some trolleys were very big and were cited as

posing potential health and safety hazards in busy areas. Often traders used trolleys as makeshift stalls to display goods. However, one local authority thought it too complicated to enforce and another did not advocate specific dimensions because new trading methods and technology in the future could mean the emergence of different types of goods transportation.

One local authority thought the use of sack barrows (folding truck hand carts) was more appropriate. Another local authority pointed to the definitions of size set out in Local Government (Miscellaneous Provisions) Act (LGMPA) pertaining to newspaper vendor stalls as a guide to size. Another thought that trolleys should simply be of appropriate size to move as pedestrian traffic.

A few thought the use of trolleys by pedlars should be stopped altogether.

Specific suggestions for trolley dimensions were variously:

- Maximum size of 1 metre by 2 metres high
- Trolleys - should have two wheels and be no bigger than one metre in any dimension
- Size of trolley should be no larger than 1 metre by 1 metre
- A two wheeled 80 litre suitcase should suffice
- Size of trolley needs defining - no larger than 1 meter by one meter
- Leeds does not support the 1m suggestion will still cause obstruction and favours small trolleys (hand luggage size)
- Trolleys should not be more than 1mx1mx1m
- Trolleys should be no bigger than a pram
- Method of transport should be by suitcase - if forced to have trolleys then no bigger than 0.25 cubed.
- Exclude the exposure of goods from the trolley - trolleys should be no larger than 500mm wide and 500mm deep no higher than 1000mm
- Should not exceed 1 cubic metre
- The term "small means" is too vague. Trolleys should be of a maximum 1.5m length
- No larger than 100 x 50 x 50cm - powers to limit pedlars if there might be a "cumulative" problem too many in one area
- Vital to define trolley size - limit to 1,5m long by 06 m wide by 1.5m high reduces risk of injury to public
- Sheer size of some makes difficult to move around town centres Should be restricted to (H) 100 (W) 64/(H)39.3 (W) 18.5 (D) 25.2
- Trolley size should be in guidance and not in legislation too prescriptive

Pedlars

There was mixed opinion amongst the pedlars with regards to whether the size of a trolley should be set out in the definition.

The pedlars who agreed said that if a trolley causes a genuine obstruction to the public then it is too large. One pedlar said that in their experience, a trolley somewhere in the region of 4 feet by 2 feet is adequate to transport and display, this particular pedlar also pointed out that many items don't necessitate the use of a trolley. Another pedlar

commented that the size of the trolley should definitely be limited as some pedlars do take advantage and they thought that 1.5m square is a workable size.

The pedlars who disagreed are not against the trolley size being restricted but feel it is for the courts to determine. They said that it was for regulating authorities to bring forward the relevant offence according to the relevant law which could for example be about obstruction.

The definition of a pedlar is not in need of change but “permissible activities or clarification can be incorporated by amendments to the LGMPA as ruled by the Opposed Bill Committee on the Bournemouth and Manchester Bills where they ruled the size of a trolley must be no bigger than 1 cubic metre. This ruling considered case law (Shepway vs Vincent) and put an exact size on the up until then undefined size of an allowable appendage.”

One pedlar pointed out that a certified trader with 1 cubic metre capacity is proportionately different to a licensed trader with up to 24 cubic metre capacity and that the certified trader is mobile and the licensed trader static. They went on to say that; “this Question 3 indicates the authors lack of historical understanding of evolving legislation over past decade which acknowledges no public support for repealing the Pedlars Act and instead promoters have sought conditionality of pedlary in LG(MP)A. As all private Acts and current bills seek this route then the focus of this consultative process should shift away from amendments to Primary Statute to modifying /amending Secondary legislation only.”

One pedlar suggested that “Yes and No. It is for courts of law to determine the Pedlars Act, and it is for regulating authorities to bring forward the relevant offence according to the relevant law out of many, which could for example be about obstruction or having a false certificate.”

This particular pedlar also suggested “this consultation needed to have a more thorough scrutiny of existing law, so as to be able to recommend a wider review of all law and associations such as the ATCM & the NABMA impinging on HMG & the purview of Local Authorities.”

Others

LACORS had no strong views on trolley size but it could be defined in a similar way to specifications for news vendors stands (which are already set out in the LG(MP)A). Avon and Somerset Police felt that a definitive trolley size was a good idea and in their opinion should be no larger than a pull along shopping trolley. Lincoln Business Improvement Group said that large trolleys impeded pedestrian traffic flow and were detrimental to the visual amenity of a historic town or city. They posed unfair competition over retailers who paid business rates and should be no larger than 35x25cm and no taller than 50cm. The FSB agreed that defining the size of a pedlar's trolley was important and that they should be no bigger than a domestic wheel barrow.

An individual challenged the need to have trolley size defined, taking the view that the size of particular streets and the particular circumstances under which trading took place would dictate what was acceptable, given that a pedlar must be able to move their goods on foot. Obstruction is dealt with by the Highways Act.

Question 4: Do you have alternative suggestions? Please provide them.

Local Authorities

About half of the local authorities responding did not have any alternative suggestions or felt that they had already covered this ground in questions 2 and 3.

Crawley Borough Council and City of York Council said that pedlars should hold liability insurance. Doncaster Borough Council thought that section 149 of Highways Act could be used to remove trolleys from the highway. Glasgow City Council wanted pedlars to be restricted to door to door sales only as the current definition is open to abuse and too close to street trading. There was also support for a ban on pedlars using trolleys in designated street trading areas and also for limiting pedlar visits to particular areas and at specific times. Chichester Council commented that pedlary takes up a lot of officer time and any new system must be simple and cut out judgement issues such as "reasonable distance" and size of trolley.

Pedlars

The majority of pedlars feel that there is no need for change as they would like to continue as they are, and that if the council officials feel a person is using an outsized trolley from a regular pitch they should be prosecuted for illegal street trading.

However the following alternative suggestions were made by some pedlars:

- Look at all case law to fully understand the permissible activities of a pedlar. Pedlars feel that the definition of a pedlar is still fit for purpose; any requirements that give clarity can be incorporated into the LGMPA (Local Government Miscellaneous Provisions Act (1982)) through amendments. They felt that the Government should not prejudice this consultation by selecting some case law and ignoring others. (Pedlars have provided a full schedule of pedlars activities in their answer to Question 2 which can be found on the BIS website in the individual responses).

- One pedlar said that “apart from a repeat of the comments given above in answer to Questions 2 & 3 - this question cannot be answered with effect as it has no point of reference other than its own box. The whole of this consultation needs to be revised in order to establish both a domestic and European context and not be so limited to an obscure agenda that seeks only to penalise pedlars.”

Others

LACORS had no further comments here. The National Market Traders Association (NMTA) said that pedlars should carry their goods.

Question 5: In your view, will updating the certificate as described above make verification and identification of lawful pedlars easier for enforcement officers? Please give reasons for your answer.

Local Authorities

It was generally agreed that updating and standardising the certificate would be a very welcome move and make it much easier for enforcement officers. There was at present inconsistency in the types of certificates issues amongst police forces. Most local authorities called for a certificate or licence containing at the very least: date of birth; photo ID; address of the pedlar. Some called for National Insurance numbers to be included. However, Glasgow City Council felt that including NI numbers would raise issues under the Data Protection Act.

Torbay Council thought it was too costly an exercise and inclusion of pedlars under the LG(MP)A would be better. Belfast City Council were concerned that that pedlars might try and trade in Northern Ireland where they would be deemed as illegal street traders and a consistent approach across UK is therefore required.

Some other comments were:

- Updating certificates is essential
- Standardisation nationally of certificates is needed
- Updating certificate will make it easier to enforce - standard template welcome
- It is not the certificate that is the problem - illegal street traders hide behind pedlars certificates
- Photo "smart" type ID cards are needed - inconsistency across police forces in present types of card
- Certificates should be similar to those issued for taxi cabs
- Yes will provide traceability
- Yes all information will be on hand to check
- Strongly agree that system needs radically updating. Standardised certification scheme would promote Better Regulation
- Support the issuing of permits to be transferred to Local authorities from the Police - would then avoid a national database
- Yes should make verification easier - photo needed - database should be National and funded by central Govt
- Certificate needs improving and updating issuing authority should be able to recover administration costs

Pedlars

Most pedlars agreed that the certificate was in need of updating. They are in favour of a national database and more stringent checks and criteria for obtaining a certificate. They think a standard certificate for all of the UK with a photo and other details that can be verified from a central database eg. a unique certificate number would eliminate all ambiguity with regards to authenticity. They suggested that “the Police who have a PNC system and a department within them or the Home Office would be ideally suited to carry out this task.” They also accept that in order for these changes to take place and be effective the current cost of £12.25 would have to increase to meet costs. One pedlar commented that “It has to be borne in mind pedlars have to renew their certificates annually and the cost of implementing this system would soon be recovered.”

One pedlar suggested that updating and standardising the certificate will hopefully add legitimacy to the occupation of pedlar. Another commented that at the moment the certificate is just a piece of paper that anyone can copy and which varies from one place to the next so that local authorities do not always recognise the certificate. This pedlar said that if there was more information on the certificate it would make it easier for enforcement officers to check out the validity of the certificate and the identity of the pedlar.

One pedlar who agreed with updating the certificate said that “the problem is that we could have DNA hologram fingerprint recognition permits and it wouldn’t make any difference as the police seldom if ever check our permits! This is very annoying at certain events when there are many unlicensed sellers who go unchecked, the council then say ‘oh, look how many pedlars there are! Something must be done’ when most of them would be gone if the police bothered to ask to see the pedlar’s license.”

However the majority of pedlars did not agree with the Government’s suggestion that this would add to reliability of handing out fixed penalty notices - they saw the purpose of the certificate as mainly for the protection of the pedlar.

Pedlars who disagreed felt that a better solution was to improve the training of enforcement officers about lawful pedlary. They felt that verification was a minor aspect of the greater issue of prejudice and harassment. They also mentioned that in recent discussions with ACPO (Association of Chief Police Officers) there was a suggestion that registration of pedlars’ certificates would be similar to registration of Firearms Licence.

One pedlar commented that “this question is not reasonable nor usefully answered because its “description” is loaded by the context of its origination and by the fact that it does not address the reality of the Pedlars Certificate as national, with national authority, and needing to be administered by national agency such as police and not as implied “dependent on whether the issuing authority should change.

Point 56 indicates that the purpose is to increase local authorities power to isolate pedlars simply as immediate offenders with burdens of fixed penalty notices and seizure: “these options... will only be viable if the enforcement officer can be confident of the offenders details” - this statement is in contrast to the certificate’s true value as a witness to good

behaviour and a pre-cursor to an I.D. card. The Pedlars Certificate is already “viable” as it supports national opportunity and is evidence of vital & viable jurisprudence. The certificate’s issue is for the protection of the pedlar and not as an aid for prosecution.”

Others

LACORS thought that the proposals to update the certification process would make verification and identification of unlawful pedlars easier. A national format was necessary and should include photographic ID. There needed to be further thought and discussion to consider the financial implications with focus on costs versus benefits and to look at other issues such as data protection, hosting and access. A working group should consider this.

Manchester United FC commented that that having worked with local authorities to combat sale of counterfeit goods on a match day they have seen that there is a great discrepancy between types of certificates around the UK. Some feature photographs and some don’t there is no way of checking whether the name on the certificate is the true identity of the holder.

ACPO agreed that a standardised certificate was beneficial to all parties and should as a minimum standard contain photographic ID, NI number (or equivalent for foreign nationals) address, expiry date and a unique certificate number. Avon and Somerset Police said that the forging of certificates was common. A standardised version would make enforcement easier.

Lincoln Business Improvement Group commented that updating the certificates will mean easier enforcement and less opportunity for forgeries
The Federation of Small Businesses supports the need for certification of all pedlars and believes the information required should be standardised.

The Law Society Scotland said that all certificates in this day and age should consist of photographic ID and the computerisation of the records together with Freedom of information rules should mean that a national database is achievable.

Question 6: In your view, is the list of information to be included in a modified certificate complete? If not, please state what information you believe should be added/removed and why.

Local Authorities

There was some duplication of responses following on from Q5 in the responses to this question. Various comments were:

- Pedlars name should be displayed on the certificate
- Date and place of birth would assist
- Date of birth and details of previous refusals – it should be an offence to give false details
- There are many foreign pedlars so passport details and proof of residency is needed

- Public Liability insurance proof is needed - consideration should be given to include the type of goods the pedlar sells
- Information should include type of goods to be sold and eligibility of foreign nationals to work
- Information should include the details of the type of goods they are selling
- Each document should have an NI number.
- Care should be taken with personal information on the pedlar (N.I number etc) so that the pedlar is not placed at risk
- Trolley size information should form part of the licence to stop larger trolleys being used later
- Certificates should include a photograph, address, date of birth, NI number, expiry date, unique number, name of the issuing authority and a relevant contact
- Could be similar to personal licenses e.g. a credit card sized photo ID card which is watermarked and includes date of birth

Pedlars

There was a general feeling that the list was not complete and that the following additions should be made:

- Proof of eligibility to work in the UK on a full time basis, which can be achieved by either showing a birth certificate, national passport (which will show either a work permit/visa or if the person was an EU national), or other proof of entitlement to work in the UK. Another suggestion along the same lines was that non-EU foreign nationals provide passport details with visas to prove eligibility to work in the UK. One pedlar commented that many of the issues that local authorities have had are actually with people who are only here on a student visa. They gave an example of Israeli students and said the reason they have been able to work as pedlars is down to police admin rather than failings in the Pedlar's Act.
- Tax Reference number demonstrating they intend to work legally. This pedlar also suggested that this information along with the applicant's National Insurance number can be stored in the centralised system and need not be shown on the certificate.
- The certificate itself should show, name, address, age, certificate number, a photograph, expiry date, and where the application was made. All other relevant information can be stored in a centralised system.
- Embedding information which can be accessed by a scanner is more modern & pertinent and fits better with the prospect of a centralised monitoring.
- The certificate should be in the form of an identification badge that the pedlar should wear and that it should be visible at all times that the pedlar is working.

One pedlar commented that pedlars should be easily identifiable to the relevant authorities. They said that they always carry their passport and or driving license as a means of further identification. Another pedlar believed that an improved application procedure will result in a small reduction in applications but a much larger reduction in the numbers of alleged breaches of street trading laws.

Another enquired why a pedlar's license has the following in bold type across the top ' this is not a street trading license' as to the layman that means they cannot sell in the street, as it misleading. They wanted to know if this was a council inspired idea.

Others

Lincoln Business Improvement Group said a certificate needed a name and address, date and place of birth, nationality and a passport number if there was no NI number.

An individual commented that address should be removed from a certificate if it was to be permanently on display, citing possible danger to a pedlar.

Question 7: Do you think that a national database of pedlars' certificates will improve the current system of enforcement and certification?

Local Authorities

There was general agreement that a national database would be desirable. Currently the police and local authorities have no means of checking previous offences in respect of pedlars. A database would be very useful when issuing new certificates and improve the current system of enforcement in this area.

To be effective the database should be regularly updated and offer easy access to the enforcement community and the police. It was suggested by one local authority that the database should include information inputted not only from the police but also from the OFT and the Trading Standards register of offences. Another local authority raised the issue of Data Protection considerations.

There was some concern about who would administer a database and about the implications on costs and resources. Many thought the money from pedlar certificate fees could cover costs. Another issue was whether the fee would be fixed nationally or locally.

One LA disagreed and thought a database would be too expensive to maintain and that exemption for pedlars under the LG(MP)A would get rid of any need for a database.

Pedlars

All the pedlars that responded agreed that a national database would improve the system. They said that if implemented in the future the criteria required for certificates to be issued to persons nationwide can then be incorporated into a national database with the same consistent criteria being recorded on the database. They point out that a database would allow certificates to be verified quickly to the advantage of both pedlars and enforcement officers.

Pedlars.info also mentioned that they are in consultation with the Association of Chief Police Officers (ACPO) which is identifying a lead person on the issues of logistics and costs of a database. They say the original Form A and Form B are adequate for the purpose provided that enforcement officers can access the data information.

Pedlars realise that the database would need to be managed by a single contact point for all concerned, and say that they believe only the police have national competency to manage the database. However, they also acknowledge that local authorities have used shared databases to track retail enforcement and trading standards offences, but state the same could be said of police to track criminals. They give an example of the shared

database of the DVLA for police to enable instant verification of the registered keeper of a vehicle, which can be accessed on board police vehicles. Therefore they suggest that "Police could also administer this database, and that this could be drawn into statute by amendment of Clause 9 of the Pedlars Act 1871, which under Clause 21 of the Act would be recoverable."

One pedlar felt that the issue of people operating from fraudulent pedlars certificates is miniscule, and that the licensing officers that they have encountered see no legitimacy in the pedlars' certificate as a license to trade. This pedlar would like to see a uniform document that can't be forged e.g. using Microsoft word, and is happy for the cost of this to be recovered with an increase to the annual license fee so long as isn't too 'astronomical'.

Another pedlar suggested that a database has to cover all of UK with EC and international access. However, they do not want to see this established through a scale of the fees. They also said "The text: 'The UK and Scottish Governments' Preferred Option' indicates the bias throughout - that this consultation looks only towards local application."

Others

LACORS said that a national database was only of use if updated regularly and accessible to councils and the police. They raised the issue of cost.

ACPO saw the benefit of a national database allowing the sharing of information between local authorities and the police. A national police database would be unrealistic due to the small number of pedlars in the UK.

The Federation of Small Businesses thought a database may not be necessary given that it is possible for enforcement officers to obtain a pedlars details direct from the issuing police station. There are also cost implications of setting up and maintaining such a database. In the current economic climate this may increase Government debt and expenditure. However, the FSB does support the certification of pedlars and that the information required on application should be standardised.

An individual agreed that a national database is sound in principle.

Question 8: Do you agree that the list of information to be held on the database is complete and correct? If not, please state what information you would remove/add and why.

Local Authorities

Some local authorities were content with the list of information given. However, many suggested additions. The most common suggestions were for the current address and date of birth of pedlars to be added.

Here is a selection of suggested additions:

- Current address of pedlar
- Date of birth and possibly place of birth
- Database entry should include National Insurance number
- Previous Fixed Penalty Notices should be included
- Any previous convictions should be included
- Database should contain previous enforcement advice - such as written or verbal warnings to pedlars
- Any previous breach of street trading, consumer protection and Trading Standards legislation should be recorded on database
- Additional information should be held on a database with passport details and UK entry conditions
- Database should include work permit details of foreign nationals
- Photo ID of the pedlar should be held on the database.

One local authority disagreed with the inclusion of National Insurance numbers - this would entail data protection issues and be more costly.

Pedlars

The following additions were suggested by pedlars:

- Visa/work permit number or proof of entitlement to work;
- Tax Reference number;
- Height;
- Eye colour;
- Country of birth.

One group of pedlars suggested removing all except name and number, to protect privacy and data protection, from the existing list and to add photograph & bar code.

One pedlar pointed out that the Durham proposal was for a “central computerised collection of data on pedlars’ certificates”, and that there is a need for minimal data and not to maximise the information held on a certificate. This pedlar suggested that name, number and if technically possible, a photograph or laser bar-code is enough. He felt that as the police run data checks, and also input and access data on a wide variety of activities, they are the priority function requirement monitored by a supervisory and appeal agency. He says “with that all approved officers will then have the technical solution of a scanner to validate a pedlar’s Certificate.” He thinks that “removing data-sharing capacity from one agency & granting it solely to another incapacitates the system - whilst allowing too much access to too much information is similar and contravenes too many aspects of privacy & security.”

Another pedlar questioned why the database would hold previous street trading offences? He asked if this was related to an alleged remark made by a member of Trafford licensing authority last year about prosecuting as many pedlars as possible so they wouldn't get a pedlars license the next year.

Others

LACORS felt that was an issue to be discussed along with questions 5-7 at a working group.

An individual objected to the address of a pedlar being recorded on a database if the database was open to the public – citing the possible placing of pedlars in jeopardy.

Question 9: Would you support the reintroduction of certification for pedlar service providers? If so, please say why and provide any evidence in support of your view. If not, please say why.

Local Authorities

There was a split in local authorities between those who agreed and disagreed. A couple of local authorities asked for "sale of services" to be defined. Another asked whether the type of outfits selling memberships of roadside assistance services should be included.

Comments against the reintroduction for service providers included:

- No, service providers should be excluded
- Do not believe the reintroduction of certification is necessary - any services provided will be dealt with by health and safety or other legislation
- Street trading only covers trading in goods and pedlars should comply with this legislation to avoid being a nuisance
- No do not support as the number of potential applicants too small to warrant organisational input
- We accept the findings of the Durham report that the number of pedlars is small
- Clearer definition of services needed
- This area is not a priority

Comments for the reintroduction:

- Yes support reintroduction
- Supports reintroduction of certificates for pedlar service providers - it should be granted on local residency of 1 month
- Yes support the reintroduction of certification - also want to see "static" service providers included in street trading legislation
- Certification of pedlar services is beneficial - it would let them know about any local "no cold calling zones" as well
- Yes to provide controls over services such as henna tattooing/hair braiding in especially in tourist places
- Yes especially those who offer massages, beauty treatments, makeovers and modelling opportunities
- Yes agree. Should roadside Assistance organisations selling memberships be covered?
- Potentially yes but the area requires further work - could be a good deterrent to rogue traders
- Partly agree - we get more complaints about services offered on the street than door to door

Pedlars

Most pedlars think that no change is necessary in terms of what there is at present as there is not a national problem with pedlars providing services, and they think pedlars of services should still have a certificate.

One pedlar of goods commented that if someone wanted to shine city gents' shoes under the provision of the pedlars act then they did not see why they shouldn't be able to.

Also there was a general concern that without a pedlars certificate, pedlars of services would have their protection under such a certificate removed. It was remarked that "as a pedlar you have a 'lawful excuse' with regards to obstruction of the highway. Can you therefore show how service providers working on the highway can trade lawfully seeing that they no longer enjoy the protection of their pedlar certificates?"

Pedlars.info believe "that government failed them in hurrying a concession to the EU Services Directive in Nov 2009 for all the reasons then stated and should have sought 'derogation and transition procedure' as the matters were under current consultation by the Minister. The solution to conformity of the Pedlars Act 1871 with the services directive is not to cut away at those rights but to amend the statute to enable those rights to continue, as with pedlars' suggestions [Durham Report] with minor alterations to the Act itself and by incorporating data base proposals under the umbrella of a single point of contact."

It was suggested by Pedlars.Info that the Pedlars Act 1871 should be brought into line with the services directive and that a single point of contact could be established which could tie in with the national database. They went on to say that this could be "administered by a single UK government department in association with other agencies to include requirements such as residency extended to the EC and other nation states?"

One pedlar commented "placing this question in at this point of the document exemplifies the department's technique of cut & paste - removing the possibility of a logical flow of reasoning and indicating knee jerk panic to satisfy assumed conditions." He also said that "the precipitate reaction by BIS to introduction of a Services Directive indicates many flaws in the department's ability to have a well considered approach. The arbitrary decision to eliminate elements of the Pedlars Act whilst in 'consultation' about pedlary, using the tool of a Statutory Instrument without putting the issue through full debate in Parliament nor by suspending the initiation of the directive as allowed for by the EC: indicates that any better consideration about pedlars is more likely to be put in jeopardy. This consultation has to be in root and branch concordat with the principle of pedlary, otherwise its only result will be to spread more offence."

One pedlar commented that they did not think it was necessary to re-introduce certification for pedlars of services as the service providers are able to still work anywhere throughout the UK.

Others

LACORS said that this area needs careful consideration. There is a frequent form of rogue trading in door to door calling (e.g. offers of roofing services) the answer may lie in whether the definition of pedlar will include a combination of goods and services

Crawley Town Centres commented that they would like to see a clear definition of “the sale of a service”. They are seeing an increase in “paintball companies” and general ticket sellers of packages offering paintball days and entry to lotteries in advance who are claiming to be offering a “service”. Roadside assistance membership sellers and paintball companies are currently operating from static sites. They would not want to see pedlars moving from selling “goods” to selling “services” without any form of control.

Question 10: Do you think the proposed criteria will offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a certificate?

Local Authorities

It was agreed overall that the proposed criteria would offer greater clarity on what was expected in respect of a pedlar’s suitability to hold a certificate

In order to avoid too much subjectivity and inconsistency there were calls for better clarity of the definitions of “good character”, of what is considered “not suitable” and of “other sufficient reason”. Clarification is also needed on how an appeal against refusal of application can be made and the reasons for refusal of granting certificate should be made clear in any guidance.

Some suggestions were:

- The criteria could be more objective and could include a list of relevant offences such as unspent convictions. An alternative might be to use the same definitions as used to decide suitability for street trading licences
- Yes. But there are issues around the lack of a national database for holding adverse information
- The chance for consistency is welcomed - but it needs to be consistent nationwide. A single certificate issuing body similar to the Security Industry Authority (SIA - reports to the Home Office) would be advantageous.
- The Licensing Act 2003 has a prescribed list of offences which can prohibit the granting of licences with regard to applications for a Personal Licence. A similar approach could be used here.
- The matter of whether a pedlar is fit and proper persons would arise from Criminal Records Bureau (CRB) checks
- Criteria would be helpful in respect of previous convictions which applicants should declare. At present street trading offences are not recordable and there is no method of searching magistrate's court records.

Pedlars

The majority of pedlars thought the proposed criteria would not offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a pedlars certificate.

One pedlar did not see that the Government’s preferred option¹ is any different to the status quo. He believes that a person should have a checkable police record and that the record should be devoid of any convictions for the previous five years, and this should stand for British and foreign nationals. He also said that if no police record is available then certification should be withheld. Other pedlars agree and commented “that due to

the nature of pedlary, where a pedlar is interacting with the public and is involved with the supply of goods or services any unspent convictions for 'serious crimes of dishonesty' could be used to determine the applicant's suitability."

It was also suggested that if the applicant fails the checks then a certificate can be refused, subject to the right of appeal through the courts. He also added that people applying for a street trading licence "do not always have criminal record checks carried out by the local authorities, and that any person can open a shop no matter what previous convictions they have, subject to no licensing requirements being needed for the type of retail they intend to operate."

Another pedlar suggested that the term "by reason of misconduct or other sufficient reason" in the consultation document "is loose, open to interpretation, and would be difficult to define in law should an appeal be necessary." He went on to say that 'misconduct' is a very loose term that could mean "late for work, speeding, parking illegally, sticking two fingers up at a camera, oh so the list goes on. Likewise 'other sufficient reason' maybe your hairs too long or you wear the wrong colour trousers etc, etc." He said the present requirement of the Pedlars Act 'of good character' is something the Police currently look at and usually involves criminal record checks as evidence to an applicant's suitability, and if a centralised system was introduced any checks would be nationwide and the Police are still best placed to carry these out.

Some pedlars feel that the main problem is not with those pedlars who are law abiding but with those that flout the guidelines, who could be holding fake certificates. One pedlar said "it is very subjective to determine 'good character' and if left to local authorities or their guidelines would mean none are issued."

Pedlars.Info considers this question as irrelevant, as they say proving good character is as difficult as proving intent to act in good faith. They say "neither is relevant until judging the actions of a person after an incident. The question presumes guilt before innocence." They also commented that the replacement 'of good character' with the words "by reason of misconduct or other sufficient reason" for refusal of an application, does not define misconduct. They say "misconduct can only be determined through law to allow for appeals against decisions not to issue certificates or licenses.", and the words "or other sufficient reason" are so broad that these reasons could not be defined in law. These terms require clarity and definition in statute and as presented in this document do not further the clarification of who is suitable for a certificate any more than the term "good character" used at present in the 1871 Act."

Pedlars.Info also say that "it has to be noted that the LG(MP)A states quite clearly (Street Trading Licenses 6(d)) that licenses can be refused to the person by reason of having been convicted of an offence, so the presumption is that those checks are carried out by local authorities, but the statute does not make this a legal requirement. There is a very strong possibility that many licensed street traders may have been convicted of an offence, whether these are spent convictions or not, is beside the point. The Pedlars Act in contrast at 5(1), makes it a statute requirement that the person must be of "good character" and that "in good faith he intends to carry on the trade of a pedlar" for the issue a certificate. Notice also that convictions under the Pedlars Act, such as vagrancy (section 13) forgery (section 12), borrowing of certificate (section 11), certificate not to be

assigned (section 10) are endorsed on the certificate, under Section 14 of the Act. The LG(MP)A does not have such safeguards.”

They agree with other pedlars and say that the Police database check is sufficient to determine suitability. They commented that “if it is that certificates should only be issued by local authorities as the context of this question indicates: then there has to be consistency with applications for street traders licences, which is in itself not practical, as local licenses are only local and cannot apply to a national certificate. The applicant pedlar is self-assertive by way of credentials and assessment of own good character and the certificate is a testament to that.”

Another pedlar who disagreed with criteria remarked “yet again the government authors show their ignorance of the Pedlars Act and their state of inverted logic: there is no statement of proof required for the grant of a Certificate: the applicant is self asserting to be capable of acting as a pedlar within terms of being a pedlar, all under the aegis of magistrates and police who are best able to assess the balance of evidence more than the ill defined “other” of “Option B”: which does not declare itself, but is: the narrow but strong lobby of private interests as displayed through private bill business in Parliament . This Option is yet a further push towards removing the entire substance of the Pedlars Act by textual manipulations carried out under the guise of some sort of efficiency that is not provable and does not come within the remit of fairness nor justice. On proof of evidence there is a right of appeal to the respondent through a court, rather than the sole adjudicator being local authority with many unspecified views.”

Only one pedlar felt that the proposed criteria will offer greater clarity in terms of what is expected from a pedlar with regards to suitability to hold certification.

Others

LACORS said that the Government must issue guidance on the use and relevance of previous convictions in making a decision to ensure fairness. A problem is that there is a lack of a database for local authority enforcement activity. Some crimes will be recorded on Police national computer and some on the OFT register of convictions but there is no database where a Local authority can get a full picture of the background of an applicant.

The Federation of Small Businesses is of the view that proposed criteria will offer greater clarity of what is expected in a pedlar and lead to consistent approach to the refusal of application by an issuing authority.

An individual preferred retaining “of good character” citing the test attached to obtaining a firearms licence.

Question 11: Do you think the proposed criteria will lead to a more consistent approach to refusal of applications from issuing authorities?

Local Authorities

There was mostly agreement that the proposed criteria would lead to a consistent approach to refusing licence applications for issuing authorities and help the right of appeal in the courts. However, it was vital that there was absolute direction on implementing the system and a consistent approach from local authorities and the Police.

Clarification was needed on how an appeal to refusal of the certificate can be made. Belfast City Council said that the proposed criteria would not allow for a consistent approach to refusal and the Government would need to produce guidelines for what they believe “misconduct” and or “sufficient reason” to mean.

Pedlars

There was a variety of comment from pedlars.

One pedlar said that the criteria will not be consistent, but rather it will be ambiguous and undefined in law, therefore open to interpretation and without the safeguard of definition and clarity.

Another pointed out that they thought anyone with recent criminal convictions is currently refused a licence.

Another pedlar said “Your point that different police authorities have varying forms of checking a person’s suitability would not exist if a centralized issuing body were charged with the checks, the proposed criteria is open to abuse.”

One said that the context of the questions suggested that the proposal is to hand authority for the grant of certificates over to local authorities and as a result local authorities will be more able to have more and more frequent “more consistent.. Refusal of applications”. Local authorities, especially those with private business interests have the most amounts of refusals for licences on the simple basis that they are not prepared to allow for them.

One respondent gave an example of a case where a pedlar had been refused a pedlars certificate by a Police Station on the grounds of being a person of not good character. The pedlar concerned was very upset by this as he does a lot of work helping others and giving to charity. However the Police Station deemed the pedlar not to be of good character because of minor offences he had committed many years ago. The respondent maintained that the pedlar is not the same person he was when he was a young man and he has grown and learnt by the mistakes of his past. The decision was challenged and the judge found in favour of the pedlar on the grounds that his previous offences were spent and could no longer be used against him. The respondent believes the case has now set a legal precedent on this issue, this being the case “good character” should be replaced by ‘The applicant should not have any previous convictions that are not spent’.” This respondent also felt that once this position was clarified with all the issuing authorities there will definitely be a more consistent approach to refusal of applications.

Others

ACPO said that the proposed criteria to refuse an application where it is considered that the applicant is unsuitable will provide greater clarity, a consistent approach to refusing applications by issuing authorities and safeguard a fair and non-discriminatory regime.

Question 12: In your view, should responsibility for issuing pedlars' certificates be transferred from the police to local authorities? Please give reasons for your answer.

Local Authorities

There was overall support for the transferral of responsibility of issuing licences to pass from the police to local authorities. The general consensus was that as local authorities already issue street trading other licences they were very well placed to grant pedlar certificates. They also have effective consultation enforcement connections with the police, the Highways Agency, and other Trading Standard departments.

It was felt that the police had little knowledge of pedlary legislation and might be pleased to lose the responsibility of issuing certificates. However, if the responsibility did pass to local authorities then many felt it was vital that they should have access to the police national database and police help and advice.

A licence issuing system could mirror the 2003 Licensing Act through which the process for granting personal licences and other registrations operates. One local authority disagreed and thought transferral would still not mean a UK wide consistent approach. It would also reduce the ability of local authorities to regulate other trading activities. An individual body similar to the Home Office Security Industry Authority (SIA) is needed.

Resources and costs

Despite agreement in the main for local authorities to take over the certification process, there was concern over resource and cost implications. Transferral to local authorities would mean added administration demands, and new working practices such as running criminal checks. Belfast City Council pointed out that Access Northern Ireland, CRB and Disclosure Scotland already carry out this type of role and reduce police burden. There was possibly also a need for new customer facing facilities to take photos and process certificates. There should also be careful consideration of how a national database might work.

Councils must ensure they recover all costs of administering the regime and higher fees for certificates might be a way (some thought it essential) of covering the costs.

Pedlars

All pedlars who replied to do not want responsibility for issuing certificates transferred to the Local Authorities. The reasons they expressed are outlined below.

Pedlars do not feel that they are welcomed by local authorities and are of the opinion that if only the places that councils prohibit will be exempted then these will be everywhere. One pedlar commented that local authorities resent not having control and revenue from pedlars, and that giving them “responsibility to issue our certificates would be a death warrant.” Pedlars do not want the local authorities to have any responsibility at all with regards to the issuing of certificates.

Another pedlar said that this was a ridiculous proposal from a pedlar’s perspective. He went on to emphasise his point by saying “would you leave a fox to guard the chickens, or put the Ku Klux Klan in charge of race relations? It’s as simple as that as far as pedlars are concerned.” This pedlar also asked why Government did not consider these concerns to be sufficient reasons not to transfer responsibility. He also remarked that “in all my years as trading as a pedlar I have yet to come across a local authority that welcomes pedlars. Emotive terminology I know but we are in the real world as pedlars and to a man do not want the local authorities to have any responsibility at all with regards to the issuing of our certificates.”

Another argument put across by this pedlar was that the Police have the dedicated resources and expertise to verify a person’s suitability, not local authorities and that an increase in the cost of a certificate could provide resources to the police enabling them to finance the delivering their other objectives. He also said “in the consultation it says that the police are not responsible for issuing any other form of trading licences, correct me if I am wrong but who has the say whether liquor licences are issued albeit through the magistrates?”

Pedars.info said that evidence in the Durham Report suggested that it would be very difficult to manage local authorities issuing pedlars certificates and to achieve consistency. They quoted paragraph 28 in the Durham report: “The ‘home’ of the administrative function varied widely across authorities, complicating the process of identifying the correct person or department to which enquiries had to be addressed.”, and also paragraph 40: “Responsibility for street trading usually resided in licensing departments but some replies were also received from environmental health. The job titles of respondents also varied considerably, from different grades of licensing officers, licensing enforcement officers, town centre managers, environmental health officers, commercial managers and trading standards managers.”

They also say stated that pedlars acting as such are exempt from street trading regulations under Schedule 4 Section 2(a) of the Local Government (Miscellaneous Provisions) Act 1982 (LG(MP)A), and “It is therefore not the remit of this Act to confer any power on local authorities to control or certify pedlars, the latter being the remit of the police under Pedlars Act 1871; this has been so since the 1871 Act received Royal Assent. Any arbitrary meddling with the Pedlars is considered abhorrent.”

Pedlars feel that if control of issuing certificates is given to the local authorities, then they will be heavily prejudiced against. The fear the local authorities will make up reasons not to issue a certificate with a simple “oh we’ve already issued enough”.

They point out that most councils have not adopted the LG(MP)A and actually express a liking for pedlars, they say “Government’s preferred option B is unsubstantiated and follows the wishes of the few disproportionate lobbying councils.” They feel that the

consequences have not been properly considered and say that “amendment to the LG(MP)A will not impose on councils who have no desire to regulate street trading and who have not adopted the LG(MP)A and such force is likely to be construed to have no basis in law.”

Pedlars believe that the Pedlars Act 1871 is workable as it is, and even though the LG(MP)A states quite clearly (Street Trading Licenses 6(d)) that licenses can be refused to the person by reason of having been convicted of an offence, the statute does not make this a legal requirement.

Pedlars.info remarked that “there is a very strong possibility that many licensed street traders may have been convicted of an offence, whether or not these are spent convictions or not – these details have to be considered in legislative changes to the LG(MP)A and not to the Pedlars Act which in contrast at 5(1), makes the issuance of a certificate a statutory requirement in that the person must be of ‘good character’ and that “in good faith...intends to carry on the trade of a pedlar”.

Pedlars do agree that some clarification of the meaning of “good character” might be needed as was the findings of the Durham Report (Ref: para 68), and say this could be laid out in statute within the Pedlars Act as an amendment.

Pedlars.info also commented that “if local authorities had the power to issue the Pedlars Certificate, they might not have a statutory duty to check the person either, depending on the wording of the statute which granted this power - as with licensed street traders at present. This would be wholly unacceptable in our opinion.”

They disagree with paragraph 75 in the consultation which states ‘transferring the issuing of licences to local authorities would free up valuable police time to enable them to deliver other objectives’. Pedlars argue that local authorities have a statutory duty to check with police about the person’s conviction status, this would in effect not relieve police of any duty or as stated above. They said that this statement is “pure conjecture, illogical and with unfounded reasoning.”

Pedlars.info also remarked that “the BIS statement in para 75, concerning the recommendation by “the policing bureaucracy taskforce” in 2005 to remove responsibility for issuing pedlars certificates from the police, has been found to be anecdotal, without any evidential substance or basis on how such a conclusion could have been made or to allow for any intelligent response on this point. Despite repeated requests by pedlars’ Roll B Parliamentary Agents for access to the Report by Alan Brown in the [traffilightsummary.pdf](#) referred to at footnote 4 page 76: - neither BIS nor ACPO have yet provided access and without it the recommendation cannot be considered and should be dismissed.”

One pedlar said that “word play and the like can be used to deny it but that was the sum of the foiled Manchester act that was the effect of the successfully passed Westminster bill. This would represent a conflict of interests pure and simple.”

One pedlar suggested that arguments were illogical and again as stated by others said that not all local authorities adopt the LG(MP)A and that they only control static positions. This pedlar also remarked that this consultation is flawed - that somehow there is no

doubt about “illegal street trading” but “uncertainty” about “legitimate pedlary” despite there being a statute about Pedlars, and that somehow: - when that is dissolved the issue ‘will be clarified’.

One pedlar who was strongly opposed to the responsibility for issuing pedlars’ certificates be transferred from the police to local authorities, said that if the responsibility was transferred to the local authorities they would still have to contact the police to do a PNC check, which would mean the process would take longer, involve more people and be less cost effective. This pedlar also believed, like many others that the local authorities are not impartial and in the past have been extremely negative towards pedlars; one pedlar even said that “I am vehemently opposed to any powers, responsibilities or further rights being extended to local authorities who have expressed an interest in outlawing pedlary.”

Others

LACORS said that the updating and consolidating pedlar and street legislation into a single system is worthy of consideration. Transferring the issuing of certificates from the police to councils because of their street trading links is also sensible. The cost implications in administering this would need to be considered. An advisory group should consider this further in consultation with local authorities across the UK.

The Law Society Scotland said that local councils in Scotland are empowered under the 1982 Act to licence a wide range of activities and are best placed to issue pedlar licences.

ACPO said that they strongly agreed that responsibility for issuing pedlar licences should go to local authorities. The police are not responsible for any other trading licences and this and some other licensing areas had been highlighted by the Bureaucracy Task Force.

An individual commented to the effect that a certificate which provided right nationally should be issue by a national authority and not local authorities.

Question 13: Do you think that clear terms for refusal of applications in the legislation, coupled with a right of appeal, are sufficient safeguards to ensure a fair and non-discriminatory certification regime? If not, what alternative or additional safeguards do you think are required?

Local Authorities

Overall respondents agreed with this. Comments were variously:

- Terms for refusal of certificates will add consistency to the process and a right of appeal will provide safeguards
- Yes it makes things clearer to both pedlars and local authorities
- Only if the terms of refusal are clear - the term "sufficient reason" is too vague
- With additional amendments this will provide a fair regime
- Allows applicants to weigh up their options and the likelihood of a refusal

- Refusal and appeals provisions are fair and non-discriminatory - additional safeguards could include timescales for determination and issue of the certificate
- Content with refusal process and right of appeal
- Yes clarification would provide sufficient safeguards and appeals, mechanisms
- Yes - provided all non-nationals produce their passports
- Yes. But the process should be determined by a single national body

Pedlars

Some pedlars implied that so long as the issuing authority stayed with the police then refusal for applications would be fairer and 'unbiased'.

One pedlar thought that a person with convictions in the previous five years would have no grounds for complaint and should find another way to make money.

Another remarked that if legislation was altered to by 'reason of misconduct or other sufficient reason' it would not ensure a fair and non-discriminatory regime. However they went on to say that if refusal was based on convictions and there was the possibility of appeals that can be heard through the judiciary then they would be inclined to answer yes.

A further pedlar said that clear terms are already stated in the Pedlars Act. He also commented that "this question is conditioned by 'What does the evidence say?' which is then not provided, instead only the tortuous assembly of words attempting to verify 'refusal of applications in the legislation'; what legislation - the efficacy of the LG(MP)A which is known and has been stated by the department's researchers to be incompetent to take on the Pedlars Act...? It is significant that this question is asked at 13 as it refers back into the consultative process and reflects forward on to all others."

Others

LACORS said that this is consistent with other licensing regimes.

The FSB said that clear terms for the refusal of a licence must be established coupled with a right of appeal.

The Magistrates Association said that the Right of Appeal should be heard through a Magistrates Court as for licensing disagreements.

Revoking the Pedlars Act and licensing Pedlars under the Local Government (Miscellaneous Provisions) Act 1983 (LG(MP)A) and Civic Government (Scotland) Act 1982

Question 14: What are your views on the above option, and how this might affect street trading or pedlar activity?

Local Authorities

Mostly local authorities were in favour of revoking the Act and incorporating it into existing street trading legislation. This was seen as a logical step. Some local authorities had already adopted schedule 4 of the LG(MP)A. Not all local authorities have adopted the LG(MP)A fact which needs consideration.

- It makes sense to revoke Pedlars Act whilst retaining right for them to trade and bring under street trading legislation with local authorities to administer certificates in a consistent approach
- Sensible to revoke the Pedlars Act and incorporate into street trading legislation - do not foresee any detrimental effect on street trading or pedlar activity in this proposal
- Revocation of pedlars licence and new revised street trading act would benefit all street traders
- Amalgamation of pedlars and street trading under open Act would mean effective and easier administration
- Belfast City Council said that if the Government repeals the act it should think about how pedlars residing in Northern Ireland can be licensed. STANI would require an amendment to allow for relevant provisions to be incorporated
- Liverpool City Council said that they have already adopted schedule 4 of LGMPA so they have no problem adopting pedlar provisions
- Best option to deal under street trading legislation - LGMPA is adoptive so certification of pedlars would have to be compulsory if residency qualifications are to be maintained for pedlars

Against/not sure

- Difficult to see how it could be incorporated into LGMPA section 4 which is adoptive - not all local authorities have adopted it.
- Modernise the Pedlars Act and do not incorporate in LGMPA
- We would welcome rationalisation under the LGMPA but would really prefer local control
- If implemented under the LGMPA would pedlars be restricted to "consent" streets? If not what would be the advantage in repealing the Pedlars Act? Local authorities would still be obliged to check records, input data and process certificates

- Glasgow City Council said that the act should not be revoked but the definition to door to door sales should be amended - otherwise all activity falls into scope of street trading and is regulated by local authorities.
- Revocation of pedlars licence would cause increase in number of traders creating problems for enforcement - creation of "zones" and prohibited streets might be a benefit
- The issue should be further debated

Pedlars

Our pedlar respondents are against revoking the Pedlars Act and some believe this would mean the end for pedlary. One respondent said that “the 'government' (that body referred to in the Bis document) must decide if they want pedlars or not, this is the simple question at hand”. Many pedlars once again re-iterated that they did not want local authorities to take over control of pedlars. They do not see a need for modernisation and one pedlar remarked; “it stands to reason then that a freeman of good standing is provided for by the law to sell his wares, the pedlars act fulfils this.” They say the current act is a good law and safeguards both pedlars and the public.

One pedlar suggested that whilst the LG(MP)A is suitable for many administrative functions of local government it is not suitable nor can be easily adopted to reflect a wider concern. This pedlar also said that “to satisfy bureaucratic regulation there is the deliberate false distinction made between “pedlary” and “street trading” in order to fit a misconception and a ridiculous outcome: that with no “Pedlars there is a definition of and about Pedlars.”

Another remarked that “if the local authorities were given powers to designate streets as prohibited I can guarantee that they would designate the town centres as prohibited forcing pedlars to solely go from door to door.” This particular pedlar also stated that at present pedlars are able to sell their wares in the town centres and door to door, and implied that this might be lost if powers were given to local authorities.

Pedlars.Info commented that “a great deal of effort and thought was obviously put in the drafting of the Pedlars Act, as is evident from the numerous clauses and safeguards incorporated into the Act. It appears to us that if the Act was repealed and the relevant provisions incorporated into other Acts, this would be a pointless exercise, a waste of time, since as it stands, the Pedlars Act it is good law, but may need some tweaks to incorporate a proposed national database and extended requirements of criteria for certification. That would remove the complication of including those authorities that have not adopted the LG(MP)A, which BIS has also identified as a problem.”

It was also again mentioned by one pedlar that certification of pedlars should remain with the police.

Others

LACORS thought that incorporating pedlars within the LGMPA and Civic Govt (Scotland) Act will simplify matters but the process needs to be worked through with the Convention of Scottish Local Authorities, Northern Ireland Local Government Association and the Welsh Local Government Association.

The National Market Traders Association said that failure to adopt pedlars in LGMPA could provide safe havens for illegal traders

Avon and Somerset Police said inclusion in the LGMPA and Civic Government (Scotland) Act are the logical ways forward.

Lincoln Business Group said it was logical to for all street trading activity to be encompassed within the same regime.

An individual commented that the option would dissolve the rights of pedlars and would not serve to reduce the perceived confusion.

Question 15: With further work do you think this option is viable? Please give reasons for your answer.

Local Authorities

The issue of those local authorities who have not adopted the LG (MP) A was mentioned a lot here

- Yes but there is a need to talk to those local authorities who have not adopted the Act
- There is difficulty in maintaining national certification scheme under the LGMPA as not all local authorities have adopted it.
- Yes but there will have to be consideration of removing the discretionary element of adopting street trading act under LGMPA
- A system needs to be in place that ensure cross UK consistency
- Belfast City Council said that they agree further work on options is viable in Northern Ireland - local authorities there have experience and police are stretched
- Yes it will make it easier to apply to pedlars as well as street traders. Trolley size issues can also be updated in the LGMPA. Certificates should be issued only by the actual LA in the area.
- Yes but further consultation is a must
- Option is viable if local authorities have additional controls over where pedlars trade. National list of streets would be very long and time consuming to include on online register
- Possibly but would need to see how it works

Pedlars

Pedlars on the whole felt that this option was not viable. One pedlar remarked “it is not viable if pedlary is to continue, it is viable if the aim of all of this is to bring it to an end.” Others maintain that the Pedlars Act is fit for purpose, and that it can be amended to incorporate the improvements such as a National Database which is centralised and continues to be operated by the Police or Home Office, with the criteria of “good character” drafted into police guidelines.

Pedlars are strongly against local authorities having a say in the certification process and a large majority believe that local authorities would push pedlars out of their towns. Pedlars argue that they help to create a colourful atmosphere in the town centres and this would be lost.

One pedlar gave an example of a survey they carried out with the public, asking them if they would prefer pedlars approaching them in the town centres or in their homes. They said the majority of those asked said they were more happy to be approached whilst out shopping than when they were at home.

One pedlar said “there is no ‘reason’ other than the demands of a small but persuasive lobby, a narrow sector of local authorities, the destruction of ‘viable’ law, the awkward instigation of an unknown process that has no basis in actuality, the removal of effective and viable safeguards, the imposition of an uncapped tariff of fees, the trammelling of human liberty, and an opportunity for government departments to have a long sledge through a proven and well regarded constitution.”

Others

LACORS said that Schedule 4 needs to include powers to seize goods and powers of arrest.

Question 16: Are there other ways of maintaining the national access to pedlar certificates other than under the Pedlars Act?

Local Authorities

- No not unless there is a national database held by the police
- No. A database is essential
- Yes through street trading legislation
- Street traders and pedlars would carry out their activities in designated appropriate places in LA areas where the Act does not apply
- Certificates could be issued by SIA type national body giving consistency
- One Council in each County could take control of updating County Register and put on nationwide website for authorised persons to see?
- A full impact assessment is needed. A Pedlar scheme should be self-financing, and a national database is needed. Information should be shared with the police.

Pedlars

On the whole pedlars are happy with the Pedlars Act and see no major problem with the status quo; they don't think it is necessary to spend time and money putting another system in place. Pedlars believe the Pedlars Acts are for pedlars and should not be changed. In their view anything else would not be for Pedlars, just other forms of licensed traders with different lawful rights to those of pedlars.

Pedlars have noted the comments made by councils in the Durham report, saying that they had no problem with pedlars but would apply for powers to use against them as they would be useful to have. Pedlars would like councils to justify their complaints and provide evidence.

One pedlar gave an example of a friend who was prosecuted for illegal street trading (but has a pedlar licence) on the basis of selling inferior hats and that it was implied this was unfair to legitimate business. The pedlar took the view that the big business in the area was unlikely to be concerned about his friend selling a few hats.

With regards to repealing the Pedlars Act, pedlars asked what use would a national certificate be if pedlars were not allowed to sell anywhere in Britain? Pedlars believe that if the Pedlars Act system were to be removed, Councils will make any area worth trading in a consent street, and consent will not be given. One pedlar commented "how many times have I offered to pay councils a fee to sell at Christmas lights switch ons or council bonfires etc! The answer is invariably "no."

One pedlar remarked that "I believe that the present way of accessing a pedlar's certificate is the best and most cost effective. The police are in the best position to do a check on the suitability of an applicant and are already geared up to provide pedlars with certificates. All that is required is a little more clarity in the process to make the service better."

Others

LACORS thought that including pedlars in street trading will provide consistent approach but needs thought and discussion - maybe through working group

ACPO said that revoking the Pedlars Act removes the need for a national database - and would also serve the needs of pedlars in trading freely. But it could bring about an increase in traders not of good character and increase nuisance factor in communities. Some regulation is necessary either at local or national level.

Revoking the Pedlars Act and excluding pedlar activity from street trading regulation except in specific, defined circumstances.

Question 17: What are your views on the above option? Please give reasons for your answer.

Local Authorities

Against

- Strongly disagree - will create inconsistencies of approach and reduce consumer recourse - unable to differentiate between legit pedlars and rogue traders
- Prefer previous options for enforcement purposes

- Do not support. No exemptions should be allowed - pedlars cause big problems on Bonfire Night for example
- See no good reason to simply revoke Act without transferring regulation to other legislation. Do not want to end pedlar activity - just be better regulated
- Would remove all control and make a “rogues charter” and would be difficult for central government to trace individuals (e.g. DWP)
- Could be a problem - Pedlars may think they have a right to turn up and trade no matter what
- Do not support - too complicated with more itinerant trading encouraged with less regulatory controls
- Don't support - it's too complicated
- Seems complicated - how to enforce number restriction? Different local authorities have different rules - flexible approach therefore important
- Strong reservations on deregulating pedlar certificates - don't want a two tier system of street traders in adoptive authorities. We prefer implementation of other proposal in relation to design of certificates and procedures. This should be in conjunction with national database
- Govt should introduce UK wide legislation to regulate street trading - this could be modelled on STANI [Street trading Act Northern Ireland] and Westminster City Act
- Local restrictions should apply to pedlars such as those set out in Canterbury Nottingham Bills before Parliament
- Amendment to Pedlar's Act is best route for national database to be maintained

Not against

- Seems less bureaucratic less costly and provides more freedom for pedlars to trade under this proposal - would only regulate pedlars in those streets that have been designated and those local authorities that have adopted street trading provisions, Certification of pedlars does provide consumer protection and regulation of fair trading
- Success depends upon how well defined the exemptions are. Must be no ambiguity or must be excessive monitoring for local authorities to ensure compliance
- Support the idea that local towns and local authorities have some measure of control on pedlar numbers at specific times - need to be able to inform pedlars of any current restrictions to be fair
- Removing pedlars from the Regulations is ok - provided local authorities can prevent them from being a nuisance to other street users
- It's a reasonable option

Pedlars

There was strong opinion amongst the pedlars against option. They say the Pedlars Act is fit for purpose. They say it “maintains legitimacy for a separate cultural identity for those who consider the profession a worthy one. Pedlars are not ONLY street traders and cannot survive by over-regulation from those who zealously seek absolute control but have only a limited perspective.”

One pedlar commented that the pedlars Act is fit for purpose especially if some of the other proposals are taken on board.

Another pedlar said “I personally am proud to possess a pedlar’s license, I see no benefit in doing away with the license.” This pedlar also remarked that “there really aren’t that many people that wish to be pedlars, I have attended events where there have been perhaps up to 30 pedlars and yes that is a lot but then again these have been events catering to many thousands of people.”

Pedlars think that one of the regular complaints local authorities make is the inability to enforce consumer protection or trace alleged offenders. They say the pedlars certificate gives protection to both pedlars and the public, that without this certification requirement pedlary would be a ‘green light’ for rogues and criminals to be free to operate on the street. One pedlar asked “Why do you think the Pedlars Acts were introduced? Pedlars do not sell shoddy goods or are not fly by night traders and would not want to see their certificates removed to facilitate the removal of the Pedlars Acts.”

One pedlar remarked “yes if pedlary as constituted is ruined”. He gave the following reasons for his remark;” there has been only a very conditioned set of questions which direct towards a single result. Pedlars through their response to the pressures put upon them by those wanting to eradicate pedlars as a facet of society have in contrast made practical and purposeful recommendations as to how their identity can be preserved and improved. Some pedlar “options” require only technical adjustments – whereas this BIS document heads towards only disintegration of law.”

Others

LACORS has concerns about revoking pedlars Act and excluding from street trading except in specific defined circumstances - revoking act and then having no certification scheme would not enable local authorities to exert proper controls over itinerant traders

Avon and Somerset Police said it was an easier option but not a good one as it would make concerns of licensed street traders worse and increase problems in town centres.

The National Market Traders Association said it was not an appropriate course of action. The certification scheme is acceptable to pedlars without structure and could be a "free for all".

One individual commented that this would allow those without work visas to act as pedlars without any checks on their rights to work – being detrimental to existing pedlars who do have a right to work in the UK. It might lead to abuse of minors, vulnerable people and immigrants. It may increase the burden on the police. If local restrictions are applied then pedlars will no longer be free to trade. Such local authority control would promote anti competitiveness. Any proposed changes must look to protect pedlar rights not dissolve them.

Enforcement

- (Option A: Do Nothing
Prosecution through the courts will continue to be the only sanction available for street trading offences for those authorities with Private Acts.
- Option B: Provide local authority enforcement officers in England and Wales with powers to issue FPNs in respect of street trading offences.
- Option C: Provide local authority enforcement officers with powers of seizure, with forfeiture by order of the courts.
- Option D: Provide local authority enforcement officers in England and Wales with powers to issue FPNs and powers of seizure, with forfeiture by order of the Courts (i.e. a combination of options B and C)

Question 18: Which of the above options do you favour?

Local Authorities

- 81% option D
- Less than 1% option B
- Remainder did not comment

Pedlars

All pedlars who responded chose option A – do nothing.

Others

At least 80% of all others who commented opted for option D.

One of the individual responders favoured none of the options.

Question 19: Should Local Authority Enforcement Officers be given powers to:

- issue fixed penalty notices**
- seize goods, with forfeiture by order of the Court?**

Please give reasons for your answer.

Local Authorities

All of the local authorities who responded to this question agreed that enforcement officers should be given powers to either issue FPNs or seize goods, and in some cases both, for repeat offenders.

Reasoning

The main reason that local authorities liked this option was because it would give them more control within their towns and cities over trading in the street, and they view the currently limited powers available to local authority officers as a barrier to enforcement.

Many local authorities felt that seizing goods would be an effective financial deterrent as it provides speedy and immediate action and many offenders would only view a fine as a minor irritant. At present local authority enforcement officers frequently have to wait for police officers to be available, if goods are to be seized, so this would free up police time for other tasks. One local authority stated that when police have seized goods, it has the effect of clearing the city centre for weeks. They also said that unfortunately the police do not have the resources to deal with offenders and have only seized goods when the offending has been extreme.

The cost of prosecuting offenders for illegal street trading outweighs the cost to the defendant, largely due to the small fines imposed by the Courts. FPNs and powers to seize goods would provide a more cost effective way of dealing with street trading offences and would prove to be a quick and easy method of enforcement.

One local authority felt that it is important councils have a range of enforcement options so that they can react to the offence depending on the severity of that particular offence. Swifter enforcement means less waste of court time and less cost to both the local authorities and the courts.

Other reasons given in support of enforcement powers were that they would assist with consumer protection issues, remove nuisance, and reflect trading standard powers and ensure speedy action.

Pedlars

Pedlars are strongly opposed to the issuing of fixed penalty notices, and one pedlar commented if someone is breaking the law then "let them be arrested and charged then let them have their day in court." This pedlar went on to say "that when prosecuting criminals is deemed to be expensive we are all in danger."

One pedlar commented "the department uses a figure of 7000 pounds as a typical cost for a prosecution. When asked for evidence as to how this figure was arrived at, it was stated as a figure quoted verbally by a town centre manager during the Trading Standards Institute Conference in Brighton in July of last year. This figure cannot be substantiated with evidence and therefore the entire basis of the argument for FPNs or seizure is flawed. You state a ratio of 10 to 1 was found to be the ratio of costs outweighed in favour of pedlars. Perhaps an increase in fines through the courts could alleviate this. Fixed penalty notices are issued for traffic offences, dropping litter, and dog fouling, but a person if they so choose can go before a court and plead their innocence. They do not have their vehicle seized or dog impounded until the day they prove their innocence. I can only agree to FPNs for pedlars offences such as trading without a certificate, assigning a certificate to another, borrowing a certificate, failure to produce a certificate, or begging. As for charges of not acting as a pedlar it is for the courts to

determine whether an offence has been committed not some over-zealous, paid operative working for the local authority.”

One pedlar who claimed to have been subject to the misuse of local authority powers strongly opposed the whole idea of fixed penalty notices.

Another pedlar said “I would like you to understand how it feels to constantly be threatened with ' we'll take your gear ', it is an overused threat and it is not nice. I work hard, I buy stock to sell to exact a profit, it would be upsetting enough to lose my goods to a policeman let alone a street warden. If a street warden sees someone selling in town and without a peddlers license then let them call the police. Will these super wardens be shutting down food stands too? Perhaps they could close a shop down for breaches of consumer law?”

Others

Those people that agreed with additional enforcement options commented along the same lines as local authorities, saying that there needs to be some form of penalty to act as a deterrent and enforcement powers provide a quick and easy method of enforcement without going to the huge cost of a court action. However, one person said that there must be further sanctions for repeat offenders via the courts with the maximum fine of £1000 as now.

One person suggested that enforcement powers for local authorities will force pedlars to manage their own pedlar operation far better because if they don't they know they will face immediate enforcement action.

NABMA said that they consistently argued that the seizure of goods on the spot would provide a much more effective means of dealing with the problems of unlawful street trading and pedlars. There is already precedent for this in London and elsewhere. They say the evidence collected by NABMA suggests that such action is effective.

An individual disagreed that fixed penalty notices or seizure should be options for local authorities suggesting that local authority offices are not capable or likely to be able to make objective decisions as to when illegal street trading is occurring and that this should remain the province of the courts.

Question 20: If you favour introducing new powers for local authority enforcement officers, can you provide evidence to support this view, particularly in terms of increasing the effectiveness of enforcement in this or other areas? If you do not support further powers, can you provide evidence to support this view?

Local Authorities

It was widely felt that it is important with any regulatory activity that councils have a broad range of enforcement options to ensure they can choose the most proportionate and appropriate response in each case. Having stronger, more immediate powers plus being

able to enforce the legislation within the local authority would make enforcement more effective.

It was felt that these powers would empower local authority enforcement officers to feel more willing to deal with the issue. In a large number of cases, enforcement officers have to spend their time 'chasing around' after illegal street traders that hide behind pedlars certificates. Having these additional powers, and making them known to illegal, and legal, street traders will soon increase compliance across the board.

Many local authorities like that they can provide an immediate "punishment" for an offence and consider them more efficient than, for example in Scotland, producing a full report to the Procurator Fiscal for prosecution. They consider it important that councils have a broad range of enforcement options so that they can react to the offence depending on the severity.

There was a general consensus that trying to enforce current pedlar legislation is very time consuming when offences are taken to the Magistrates' Court. For example it can cost over £1000 to secure a conviction with the pedlars being fined £120, therefore costs awarded are invariably lower than those incurred. One local authority commented that their enforcement officers currently record the details of all pedlars spoken to and offer guidance on compliance with the requirement of the appropriate legislation and the pedlar's certificate. Where offences are identified the council usually considers that the costs incurred in preparing prosecution cases cannot be justified when compared with the penalties imposed on offenders.

Another local authority said that increased enforcement powers would greatly reduce the overall time spent on taking / making statements, preparing a file for court and any subsequent court appearance, thus the overall costs to the local authority would be reduced and officers can be freed up to deal with other issues.

It was noted that fixed penalty notices would be consistent with activity in other regulatory services. Four local authorities commented that fixed penalty notices have been found to be a very effective way of dealing with smoking-related and littering offences. One local authority which has recently introduced increased enforcement of litter provisions by the issue of fixed penalty notices has noted that this initiative has resulted in 3484 fixed penalty notices served for littering and a payment rate of approximately 60% is being achieved. The Courts are sympathetic to this approach by this local authority and have agreed to set one day per month aside for this work from April 2010. Over 70 successful prosecutions for non payment of the FPN have been achieved, with fines and costs of up to £475 being awarded. It has been more cost effective than prosecuting for all the offences.

In Weymouth and Portland they have a short-term influx of pedlars during the summer period and the new powers would help them to control these pedlars better.

One local authority said that introducing new powers would help to deal with people selling counterfeit goods which trading standards officer have had to deal with. An unlawful trader without goods to sell is immediately prevented from further unlawful street trading.

In relation to street trading in general, it was suggested that explicit powers of arrest and confiscation should be available, whatever the nature of goods being sold. Use of powers around obstruction may be ambiguous. Reliance on prosecution and use of Highways Act cannot provide an immediate remedy, when someone is trading illegally.

One local authority was of the opinion that prosecution should only be considered in extreme cases when both the public interest and evidential criteria as contained in the Code for Crown Prosecutors are met. Such action is extremely resource intensive and invariably leads to costs awarded to prosecutors being less than the expense incurred in instituting proceedings. To this end this particular local authority has introduced alternative enforcement strategies which include the powers of officers to issue fixed penalty notices, in relation to environmental crime (such as littering and dog fouling). Notices for street trading offences would be consistent with activity in other regulatory services.

One local authority commented that they believe in principles of Better Regulation which promote a deal of flexibility in enforcing legislation and the availability of a range of sanctions to respond to misdemeanours. This approach is consistent with the authority's enforcement policy which aims to offer advice and education to traders that are in breach of legislation and thereby facilitates a fair and safe trading environment.

Examples where enforcement powers have been applied:

Many local authorities supported the use of fixed penalty notices for lesser offences and had found them to be effective in changing the behaviour of offenders, as the example below illustrate. However a power to prosecute should be available where previous fixed penalty notices have not acted as a deterrent.

Chichester District Council said that they had prosecuted one particular trader repeatedly without deterring him from reappearing to offend again. They even got Police to seize his stall, which they held for over 3 weeks. The fines were derisory and no deterrent at all. A substantial amount of public money was wasted to collecting evidence and prosecuting him. The enforcement officer also said that he is obliged to walk past him everyday as he smiles at him, knowing that at present he has beaten the system. Any new system must not give wriggle room for people of this sort to get around legislation.

In Liverpool once the Liverpool City Council Act 2006 was passed, the pedlar fraternity quickly became aware that they risked seizure of goods if they were seen peddling in City Centre streets. This was a far greater deterrent than the risk of a small fine by the Court months down the line payable by instalments to suit them. Since the passing of the Act the incidence of peddling and general illegal street trading in Liverpool was minimal.

Canterbury has prosecuted over 20 individuals for trading in the City on Licensed Streets whilst allegedly operating under a pedlar's certificate. The courts have upheld the fact that these people whilst seeking the protection of the exemption set out in the LG(MP)A were not peddling in compliance with the requirements of the Pedlars Act.

One council that successfully prosecuted an illegal trader (with pedlar certificate) said that it took 12 months for the Court to hear. The pedlar was found guilty but only fined approximately £40, which is not a deterrent.

Bath and North East Somerset Council reported that Cardiff, Gloucester and Devon and Cornwall noted that seizure has had dramatic effects on the removal of illegal traders in their city centres where they seize goods on a regular basis.

Sheffield Council reported that it currently takes enforcement action under existing legislation but penalties / fines are too low to act as a deterrent and offenders are back on the streets the next day. There needs to be a real deterrent such as potential loss of goods.

Pedlars

Pedlars in general did not favour introducing new powers for local authority enforcement officers, and they supported their views with the following comments:

One pedlar said "I do not support this view, I have been threatened by local authority enforcement, and I have been racially abused by them ("pikey, gypo", etc). I have met many local authority enforcement officers who are completely unaware of the law as it stands now."

The main argument put forward by pedlars for not agreeing was because they say a pedlar has a right to be heard in a court of justice and they do not agree with fixed penalty notices and powers of seizure. If a pedlar has had their goods seized on grounds of reasonable suspicion this reverses the burden of proof and they are therefore presumed guilty until they can prove their innocence, and up until that point their goods and equipment have been taken and their ability to continue work has been terminated.

One pedlar commented that they do not agree with the principle or effectiveness of fixed penalty notices as the Magistrates' Association do not in principle agree with fixed penalty notices.

Another pedlar said that they knew of other pedlars who had their goods seized and were taken to the police station unfairly for questioning. This is particularly damaging when a pedlar has bought certain products to sell for a specific event such as a football match, etc. By the time the pedlar has been released from police custody and waited even longer to receive their goods back the goods are no longer relevant and the pedlar has lost a large amount of income.

Others

It was commented that the more specific and complicated the legislation is, the more difficult it will be to implement on the street. For instance, if trolley or bag size were specified then police officers on the ground would not be able to remember 'permitted dimensions' and may be inclined to avoid the issue altogether.

Crawley Town Centre management reported that they take the details of all pedlars visiting the site, and also watch how they operate and will give friendly advice as to how the individual should conduct him/herself under the existing Pedlars Act. They occasionally find an individual who will not abide by the Act and will record their findings accordingly. However the authority will not prosecute as the cost in time and effort far

outweighs the penalty the pedlar receives. Even the removal of a licence will often result in applying for a licence from a different police station so they could be back on the street taking the same illegal actions the next day. Fixed penalty notices will ensure that the individual acts within the law, a quick and easy solution to non-compliance.

Lincoln Business Improvement Group commented that Pedlars who visited their city know that any fine under the current system is miniscule compared with their day's takings and so are prepared to take the risk. Seizure of their stock would make them think twice before flouting the law. They are also in favour of Local Authority Enforcement officers being given the power to seize a Pedlar's certificate from any pedlar who persistently flouts the law.

LACORS believes that councils should have the powers to issue fixed penalty notices and seize goods as outlined above. It is important with any regulatory activity the councils have a broad range of enforcement options to ensure they can choose the most proportionate and appropriate response in each case. The Miscellaneous Provisions act and the Highways act gives councils all the power that they need to manage street trading and pedlary.

An individual commented that the LGMPA and the Highways Act give local authorities all the powers they need to effectively regulate street trading.

Question 21: Is the list of offences in respect of FPNs complete and correct? If not, please state which offences you would add or take away, and why.

Local Authorities

Most local authorities were happy with the suggested list of offences in respect of fixed penalty notices and suggested the following additions:

- New offences need to be created in respect of size of any trolley utilised and if using a trolley, public liability insurance.
- Failing to act as a pedlar as outlined in terms of the certificate and the definition in the Act i.e. trading from the same spot or near the same spot, remaining stationary between sales, using an oversized trolley, etc.
- Failure to comply with current legislation and to update authority that has provided certificate of any changes etc relevant to the issuing authority of the certificates.
- Unauthorised street trading without a licence / consent.
- Contravention of a condition of a street trading licence/consent or temporary licence / consent, or contravention of conditions of pedlars' certificate.
- Obstruction of an authorised officer and failure to produce street trading licence / consent on demand, or not giving local authority officer your name and address, as occurs with the Clean Neighbourhoods & Environment Act.
- Local authorities also issue street trading consents under the LG(MP)A as well as licences and these need to be covered by the offence provisions. This was suggested by 5 local authorities.

- Misuse of a certificate by a person or breaching one or more conditions of the certificate, it is felt that guidance should highlight these as issues that could result in revoking a certificate.
- Making false declarations, failure to keep details up to date, advising of material changes. However this local authority did state that there may be no need to include reference to lending or borrowing certificate as it is an offence to trade without a certificate.
- Falsifying information on a certificate, although this may be more appropriately dealt with by prosecution rather than fixed penalty notice.
- One local authority said that they would also want to retain the ability to prosecute for unlicensed street trading and un-certified pedlar activity and for contravention of conditions. One local authority said that they have had problems with illegal pedlars who have used counterfeit certificates in order to evade enforcement.
- One local authority commented that they would like to see the pedlars act repealed and pedlars to be dealt with under a revised LG(MP)A or similar. With this in mind they would also like powers to issue FPNs and/or seize goods (with forfeiture) for committing any offence under the legislation.
- Causing an obstruction on the highway to passers by.
- Touting offences, if they are to be included.

Pedlars

Many pedlars who responded said they do not agree with FPNs.

They did not recognise the list of offences set out in the consultation document.

They believe the detailing of “Street Trading Offences” and “Pedlars Offences”, as actionable by the same process is wrong.

Pedlars have the aegis of the law, of magistrates, and of police. One respondent was concerned that local authorities could write what they like into their adopted LG(MP)A including the scale of fees, penalties, licences, and charges of their own devising.

Some pedlars said local authorities chose to favour their own licensed street traders who were not so likely to lose their goods by seizure & forfeit unless they were counterfeit and any fines are more likely to be on a lower scale than pedlars who are not favoured at all by all local authorities.

One pedlar said “To force pedlars out of statutory protection into the unregulated maw of the LAs’ need for extra income that Local authorities misguidedly assume will be more efficient, of cost benefit & potential revenue generating, is not only not correct – it is vicious & absurd.”

Others

Additional offences that other people suggested were:

- Acting as a pedlar without a certificate.

- Using an oversized trolley or cart contrary to the permitted dimensions.
- Trading under an incomplete licence.
- Failing to comply with conditions e.g. size of trolley, remaining stationary when not conducting a transaction, fail to produce certificate when required, etc.

LACORS suggested looking at these as a separate exercise in a working group.

Question 22: At what levels do you think the fixed penalties should be set? Please give reasons for your answer.

Local Authorities

Many local authorities felt that the fixed penalty notices should be set at the higher end of the scale set out in the consultation, to act as a deterrent. The general consensus was that the penalty should be reasonable for severity of crime but must pose a deterrent and not too low such that illegal activity is seen as an acceptable overhead.

Most local authorities agreed that between £60 - £300 is reasonable dependent on the offence. One local authority commented that £300 maximum is realistic given these will be commercially motivated offences and also high enough to deter contravention. Another local authority said that a £50 penalty is unlikely to deter a trader who may expect to make £600-£800 per day.

Other suggestions/comments made by local authorities were:

- Pedlars prosecuted as Street Traders are not deterred by court fines and the Authority is forced to apply for injunctions to curtail the nuisance by regular offenders. A level 2 fine of £500 would be an appropriate level for a first time offender.
- FPNs should be set at a similar level to that assigned for environmental crime and smoke-free breeches.
- Some local authorities suggested that there should be a discount for early payment of an FPN.
- FPN level should be set at a higher rate than some other fixed penalty regimes (e.g. littering) as there is a commercial aspect to pedlary which would require a higher level to ensure a deterrent effect.
- The level should be adjusted to reflect the number of offences on a sliding scale.
- One local authority believed that local authorities should have flexibility to set the levels to reflect local costs with either power. They suggested that Parliament could intervene should levels be unreasonable or that levels could be subject to a default level set in legislation.

Pedlars

Most pedlars who responded do not agree with fixed penalty notices and believe that if an offence is “serious enough to warrant a fine then it serious enough to warrant a court room...” They are also concerned about how a financial penalty can be reconciled to the

offence. One pedlar was particularly concerned at the likely bias that would be shown by local authorities in issuing FPNs to pedlars.

However, one pedlar did suggest £100 as appropriate, but only for offences such as trading without a certificate, assigning a certificate to another, borrowing a certificate, failure to produce a certificate, or begging.

Others

All others who commented also agreed that fixed penalty notices should be set at a level that will ensure that the person receiving them acts under the law and in a responsible manner. The aim is to ensure pedlars trade within the law and not to penalise them if they do so.

Again the suggested levels of fine were between £75 - £300 depending on the nature of the offence.

LACORS also said that any fines need to be high enough to provide a deterrent and be economical for councils to pursue.

Question 23: Do you agree with the Department's general perception, as set out above? If not, please explain.

Local Authorities

Agree

Majority of the local authorities (28) agree with the department's general perception that legitimate pedlars are not the cause of the problem.

However, a local authority that agreed said that they did not think that many genuine pedlars exist and that at least 90% of the traders in their district, who trade on the streets, are illegal street traders.

One local authority commented that better legislation should give local authorities the power to examine the goods on sale to make sure they are not fake.

Reading Council agreed that the department's perception may be generally accurate in relation to the genuine pedlars who sell their goods whilst on the move. However, the main issue they face is that virtually everyday of the year people with pedlars certificates are transported from London to Reading by 'gang leader' type bosses and dropped off around 9am with their trolleys and goods. They claim that it is fair to say that many are from Israel and China and have been recruited to come to the UK for up to 3 months at a time on a visitor's visa and then sell goods. The trolleys are large and difficult to be pulled/pushed around. They are left in the town until 8pm each evening, irrespective of the weather, when they are picked up and transported back to London.

One local authority agreed and added that the public perception is that the Council is already responsible for traders in the street be they pedlars, licensed street traders or

illegal traders. They have received complaints from the public about nuisance caused and about the standard of goods which include reference to the fact that the council 'allows' or 'permits' illegal activity or the sale of inferior goods. They said a clearer enforcement regime was needed in order to address the issues raised by residents and visitors.

Another local authority observed that street trading can provide diversity and consumer choice and enhance the character and ambience of the environment. However, they felt the lack of effective control of pedlars' activities means that they are faced with shoddy goods and dangerous trolleys on the streets which adversely affect the visitor experience.

Other local authorities that agreed suggested that it was the pedlars who misused their certificates that gave cause for concern and that a great deal of council time and money is spent on maintenance and improving City Centre retail areas to present an image of the city that is harmed by the presence of often unkempt trolley wheeling pedlars. They also said that local businesses object to the presence of pedlars on the grounds of the harmful effect on visual amenity.

Local authorities would like to see diversity promoted in trading practices and also clarity and flexibility in the enforcement of street trading provisions, as well as regulations needing to be clear and proportionate to enable fair trading and competition to tackle unfair trading practices.

Disagree

One local authority said that pedlars definitely are the problem and that very few operate legitimately and comply with the terms of their certificates. They suggested the best way to deal with them is to repeal the Pedlars Act or introduce seizure powers.

Another said that pedlars were a nuisance in most city centres and acted illegally on the vast majority of occasions taking advantage of the lack of clarity in the law. They suggested that pedlars engaged in pestering and harassing visitors to their city centres. They suggested a licence with photo identification would lead to identification and also expose those without a licence who made a false claim. They also thought most people dealing with anybody door to door would wish to see some form of ID/approval.

One local authority did not agree because section 5.2 assumes that there are lots of legitimate pedlars, whereas according to them in reality they are mostly street traders, who are using it as a loophole to trade in town centres against Prohibited Street Designations. This is why they say the definition of a pedlar needs to be tighter.

The main problem identified by many local authorities is not those pedlars who trade within the terms of the pedlars act, but proving that someone is acting outside those terms, takes a disproportionate amount of officer enforcement time and resources such as CCTV had to be spent in order to gather evidence for court.

Maidstone Council does not want any changes to the provisions of the Maidstone Borough Council Act 2006 which allows pedlars to operate house to house but not in the streets thereby enabling the Council to control all street trading policy, unless the provisions of their act become national legislation.

Other thoughts from local authorities were that pedlars can cause problems on the street and allowing unrestricted numbers unregulated access to trade in the street undermines the street trading regime.

Pedlars

One pedlar pointed out that almost all pedlars charge more on like- for-like items than a market trader or independently owned shop, and that they are not undercutting anyone. In issues of unfair competition this pedlar feels that pedlars are somewhere at the bottom of the list, and that supermarkets, pound shops, charity shops and imports from China are near the top.

Others

Agree

One view was that pedlary in itself is not unfair competition, however when a pedlar does not operate within the law and stays static for long periods outside a retail unit selling similar more expensive products then this could be deemed as unfair competition.

Disagree

One individual view was that the department has missed some important points with regards to comparative retail modes:

- Street markets – these are held periodically, often on a certain weekday; Pedlars operate everyday.
- Street markets – stall holders pay an agreed fee which is many times that paid by a pedlar.
- Street traders – these are regulated by local authorities who can impose local conditions – unlike the pedlar.
- On-line retailers – unlike the pedlars, this group does not benefit directly from high street footfall.

Another person felt that the department's perception is skewed in favour of the councils and is discriminatory towards pedlars.

Question 24: Do you agree that if provision for more enforcement options against illegal street trading and a sufficient demarcation between legitimate pedlary and other street trading was established (along the lines discussed elsewhere in this document) that this would address the issues of concern to some local authorities in relation to unfair trading and competition? If not, please explain.

Local Authorities

Agree

Majority of the local authorities agreed with this, and believed that this would provide extra protection for all.

However some had concerns about illegal trading and excessive trading causing problems in areas of public access.

One local authority that agreed, suggested that there must be a clear demarcation between the definition of a pedlar and a street trader by restricting pedlar activity to door-to-door sales and another said the proposals would allow for a more consistent approach to all forms of trading.

Another local authority that agreed, felt that consideration needed to be given to how this framework would link with areas where councils and residents have agreed to set up No Cold Calling Zones or Cold Calling Control Zones.

Disagree

One local authority said that pedlars need to be controlled more stringently than they are at the moment, and that issue of personal details, taxation, defective goods and accountability need to be addressed. Others also commented along the same lines saying that it would help considerably to have a more up to date clarification of the enforcement powers and what pedlars must comply with, rather than the outdated Pedlars Act.

Councils which have their own acts strongly opposed. Liverpool would strongly oppose any suggestion that their Act (Liverpool City Council Act 2006) should be repealed as they felt it was much needed, highly effective and had greatly improved the public's experience of visiting Liverpool. Maidstone Council also had the same view as Liverpool and felt that any changes should not repeal or change any provisions in their Maidstone Borough Council Act 2006.

The council said that it was better that all street trading was controlled through the street trading legislation which allows greater control over enforcement.

Another council was not convinced that anything proposed will do anything significant to help address the concerns of pedlars / street traders operating in prohibited areas. This is because the loophole remains and local authorities will have to spend precious resources collecting evidence to demonstrate whether someone is a pedlar i.e. they are moving some of the time or are a street trader.

One local authority was of the opinion that traders in towns and cities hold pedlars certificates simply because of the exemption it affords from street trading controls.

Pedlars

Many of the pedlars that responded did not think that more enforcement provisions would resolve the issues of the local authorities. They don't agree with the enforcement provisions and believe that the local authorities will abuse these powers. One pedlar commented "I really and honestly do not see a big problem and yet still they hound us, that tells me that unless attitudes are changed in town halls there will be no satisfying them. I would not be the first to say that almost every high street in Britain looks the same now, the same shops and coffee chains and burger chains and no independent shops, further out of town you will see independent shops, they are the ones that are boarded up. Whoever created this mess it certainly wasn't the pedlar."

Another pedlar said that the “the truth is many local authorities disapprove and resent any pedlars because they are seen as unfair trading and competition in their eyes due to them not getting revenue from pedlars. They also cloud the difference between trading in the street and street trading.”

“I do believe however that a sufficient demarcation between legitimate pedlary and other street trading is necessary and this can be done by the education of local law enforcers and improved visible, consistent design, pedlars licenses.

Pedlars believe that local authorities find it difficult to interpret the law and differentiate between street trading and pedlary even though the demarcation exists within case law and the Pedlars Act. Therefore they suggest that “more complete and comprehensive guidance based on case law be raised for local authorities as recommended by the House rather than a greater increase in the scope for unlimited prosecution of pedlars.”

They added, the concept of unfair trading and competition has been created by BIS taken from Sharpe Pritchards' submission to the UBC minutes of the City of Westminster bill 1999 and that part of a modern commercial society is competitive by the very nature of business.

It was also suggested that BIS should be concerning itself with fairness through law, which under EU law concerns monopolies, which pedlars are not.

It was commented that BIS is confusing law with competition and being unfair. They went on to say that unfair is an emotive term and reading this BIS document leads into thinking pedlars practices are unfair and set out to compete unlawfully with other business. They go on to say that “BIS is there for the important understanding that business is by its very nature competitive, leads to consumer choice and a fair market price.”

Another point raised by pedlars was “Para 100, states that there was no substantive evidence to suggest that pedlars activities should be restricted nationally, pedlars agree with this view, but fail to comprehend when told by BIS that the commons, ministers and the Lords seek to stop this procession of private bills that the government merely adopts private bill measures into binding national legislation.”

Pedlars.info remarked “constant use of hypotheses by this consultation with such as: ‘would also be important’ is in context of pandering to Local authorities prejudices but is not helpful and ‘Clearly this would require further work..’ for the department..(!) while pedlars have to consider the absurdity of the suggestion that it is better for them not to attend gatherings of people - to be ‘given a reasonable time in advance..’ to decide what to do with themselves (not to go somewhere where they are likely to be fined, arrested, prosecuted, have their goods seized and most probably destroyed...(?!)”

They also said that “there is the effective law of the PEDLARS ACT which permits pedlars to trade ANYWHERE throughout the UK and here in this document there is no substantive evidence nor any made at Parliament about ‘unreasonable numbers of pedlars’; more than that: there is in the law of the Market & Fairs Clauses Act 1874 provision for pedlars not to be prevented from being at public gatherings that have access for the public. See also all other pedlar comment on ‘unfair trading and competition’.”

Others

The main concern was that the proposals, as they stood, did not address the issue of unfair competition and also some people felt that enforcement options were not needed.

LACORS felt that consideration needed to be given to how this framework linked with areas where councils and residents have agreed to set up No Cold Calling Zones or No Cold Calling Control Zones.

Question 25: Do you agree that, in some circumstances, restrictions on the number of legitimate pedlars in specified areas and at specified times are justifiable? If not please explain why you do not agree.

Local Authorities

Agree

Over 25 local authorities who responded agreed that restrictions on the number of pedlars should apply in some circumstances. The reasons given for agreeing with this were concern that visitors to the town might feel harassed, causing obstruction and congestion especially at times when large numbers of pedlars converge on a town centre.

Control is important to local authorities as issues can arise relating to over-crowding during certain times of the year for example Christmas and Easter, and also help to ensure that pedlars do not have an adverse impact on other businesses in the area, and will enable councils to regulate numbers in popular areas such as tourist locations or busy shopping streets.

York City supported their views by giving an example where in their narrow streets they often find 10 pedlars trading with large trolleys at the times when the streets are congested. Reading also have face similar problems where on some occasions they can have as many as 15 pedlars in the Town Centre all selling the same product. However, it was noted that it could be difficult to measure numbers and communicate and enforce any restrictions.

Nottingham City Council issue day licences or consents for street entertainers and suggested that this could be extended to pedlars. However, they did say that this in itself would not deter the illegal itinerant trader. Another local authority also said that day licences could be a solution at a fair and reasonable cost.

One local authority commented that it would be of great benefit to be able to specify areas / times when pedlars could go to specific areas, such as Christmas Markets, Parades, Sporting events etc. Health and Safety issues of having large amounts of pedlars in various areas with trolleys and the public trying to get around causes problems.

Restrictions would enable councils to make local choices based on local needs. In particular it was suggested by one authority that pedlar activity should be restricted on the streets in the retail centres of large cities which have been designated as prohibited for

street trading on the grounds that it cannot take place without causing nuisance and obstruction to the masses of shoppers attempting to use the facilities provided.

Another local authority would like to see this discretion extended to the types of goods which can be sold by pedlars.

One council felt that if the definition of a pedlar is restricted to only those who carry out door-to-door sales, in their view there is no need to restrict the number of pedlar certificates issued, and then all other activity would fall within the ambit of street trading and would be restricted in terms of street trading legislation. However, if pedlar activity is not restricted to door-to-door sales, then the issuing authority should be able to restrict the number of certificates granted and the areas in which legitimate pedlars may trade in order to regulate pedlar activity in areas where street trading is also prohibited. This local authority also commented that it would be unfair to prevent street trading in a particular area but allow pedlary or vice versa. Finally they suggested that due to the UK wide validity of a pedlars' certificate, that all applications are considered by a single body in order to that restrictions may be applied in a consistent manner.

Disagree

One local authority's view was that if you permit one pedlar or street trader you must permit any number.

Another local authority felt that there was no need to limit numbers, but just repeal the Pedlars Act and the numbers will take care of themselves. Another major concern was who would count the number of pedlars on any given occasion? It was felt that this would unnecessarily complicate the administration and enforcement of the system.

Liverpool Council's view was that in Liverpool it would be over-complicated and unrealistic to apply restricted numbers and circumstances.

Another local authority commented that restricting the numbers of pedlars in an area is unenforceable, as pedlars are constantly required to move on, and even if a local authority could afford to constantly monitor an area, it is nearly impossible to easily determine at any one point in time whether a pedlar was trading or not. It also said that it has been common for pedlars when approached by enforcement officers when stationary to claim that they were temporarily not trading at the moment they were approached.

Pedlars

Pedlars on the whole do not agree that restrictions on the numbers of pedlars in specified areas and at specified times are justifiable. They say that when there are events and festivals in a town centre there is enough business for everyone. One pedlar said "pedlars are business people and if they turn up to an event and there is too many other pedlars working the area they will move on and that is what is beautiful about the flexibility of being a pedlar."

Another commented that at certain events there may be 25 or so pedlars but this pedlar believed that they are conducive to the atmosphere, and the public aren't being hassled

by them. However, this particular pedlar does concede that he has seen some town centres around Christmas that probably have too many pedlars, but puts this down to bad management on the town centre's part. As they do not tell the pedlar that if he continues to turn out every day with an oversized trolley and not operating as a pedlar then they will be prosecuted. This pedlar remarked that "Most fellows like me would heed the warning and straighten up, the powers are already there." He also went to give an example of a Christmas lights switch on, he said "they charged us all £20 to trade that night, now, deep down I'm sure that wasn't strictly legal but I was happy to pay as it represented a compromise under the existing system, some Romanian friends chose not to pay and were told they had to stick to the perimeter, fair enough."

Pedlars.info echoed the above views and added that "pedlars are lawful and there is sufficient law for them to be accommodated within any public gathering as much as any other member of the public - as pedlars are members of the public and not some secretive or arcane body that needs to be hidden away from the public to prevent an outbreak of some hideous and hitherto unknown scourge, but often local authorities and associations have been the cause of terrible events - such as Hillsborough, and the City of Manchester 'Rangers' event.

They suggest that there is bias in the list of questions, and say they are all to do with increasing local authority power and penalty and nothing to do with the better regulation of local authorities "despite demand of Parliament".

They also remark that "Point 105 that follows has no comment box, however the question arises: How can HMG "in consultation" insist local authorities enter domestic premises without hurt to the HRA & ECHR? point of law."

One pedlar commented that "Pedlars are unique in that they are mobile and instantaneous in their ability to adapt to conditions. Who else is resourceful and adaptable to be able to turn up on a sporting victory parade with the likes of horns flags and whistles at an instant's notice? How on earth can the cumbersome machinery of a licensing department at a relevant local authority be expected to even contemplate a day licence scheme for such an event?" He gave examples of the Queen visiting a town, armed forces homecoming parade, etc saying that legislation that restricts this flexibility by giving powers to local authorities to limit the number of pedlars is a restrictive trading practice.

He went on to say that "pedlars cater to public demand and nowhere in this consultation have I seen any evidence of their views or any method to gauge what their views are. All this questionnaire seems to be addressing is the concerns of local authorities that wish to create fiefdoms exercising total control as to what is traded on the street."

He also referred to the Superintendent of Greater Manchester Police who gave evidence at the Select Committee Hearing in the House of Commons in support of the promoters of the Private Manchester Bill that is still going through Parliament. He said "He gave evidence saying that the large crowds at some events and a large number of pedlars who were using trolleys were a safety issue that was the plank of his argument. Has there ever been any incident where accidents have occurred or even nearly occurred due to numbers of pedlars at any given event using a trolley or otherwise? It's nonsense and a red herring. Pedlars are pedestrians and although I am in favour of limiting the size of permissible trolleys to try to say that a large number of pedlars is a safety issue is

poppycock. Are you going to restrict the numbers of pushchairs at an event, the number of disabled trolleys, or the numbers of people carrying their shopping in their trolley? It's as straightforward and ridiculous as that."

Another comment regarding the use of Private Bills was made by a pedlar who said "BIS at point 92 cannot justify using a private business model to restrict the statutory application of the Pedlars Act. The Joint Committee on Human Rights (JCHR) has commented on this: Medway (private bill) Act, but since then no determination has been made by JCHR or Parliament about Article 1 Protocol 1 – interference with the rights of pedlars; judicial review is an option to be considered as to whether restricting a pedlar's activities strikes a fair balance between that of possession of an economic benefit provided by a work instrument, the Pedlars Certificate or that of the general interest. Other places with current private bills, Reading, Leeds, Manchester and Bournemouth have realised this, so now there are no restrictions on where a pedlar may trade since the evidence presented by the promoters of the Bills was not sufficient to justify such restrictions. The bills have subsequently been amended to save the expense of any such judicial action. Acts based on the model are now currently pending scrutiny by the judiciary. There is simply no *evidence in support of restrictions. 28% of the time pedlars' work at special events or festivals and any restriction is considered an A1P1 violation."

Others

Other respondents generally agreed with the proposal, as long as certain local conditions were met. LACORS commented that it enables councils to make local choices, and this could be utilised to ensure that pedlars do not adversely impact other businesses or visitors to the town centre. This could be in the form of numbers, time and location as examples. They also said that such restrictions work well with street collections already dealt with within councils.

One suggestion was that this would be a matter for local authorities to decide, based on local circumstances, although they were not sure how this could be managed in a fair way, but suggested perhaps a short term or day licence could be considered.

An individual declared that there was no evidence to justify any restrictions.

Question 26: Do you agree that the list above illustrates the circumstances under which restriction on numbers is justifiable? Do you disagree with any of the listed circumstances, if so why? Would you add any circumstances to the list, if so, which and why?

Local Authorities

Agree

More than 25 of the local authorities that responded agreed with the listed circumstances.

One local authority commented that, it is not always possible to foresee all circumstances and the list in the guidance should not be exhaustive therefore allowing local authorities' ability to determine other similar circumstances which they would clearly need to justify.

Westminster City Council pointed out that the unique nature of the numerous iconic sites in Westminster means that unreasonable numbers of itinerant traders are not attracted seasonally but throughout the year. It is for this reason that Parliament has approved the current restrictions which have been placed on pedlars and street traders in Westminster.

Other circumstances suggested by local authorities and reasons:

- Provisions to restrict or even ban pedlars on specific days that organised events take place on safety grounds. They add to congestion and significantly alter crowd movement dynamics.
- In streets that are mass evacuation routes or emergency vehicle routes where excessive numbers of pedlars could cause a hazardous obstruction.
- To restrict pedlary in residential areas where there is a will from residents to restrict this activity – this may either be on the grounds of nuisance or for the prevention of crime, and would apply to pedlars of goods and services.
- Power to limit the type of goods sold under specific circumstances should be added to the list.
- Include controls on numbers in consent streets where the number of consents is already restricted but not prohibited. Stockton-On-Tees operates such a restriction in their town centre.
- Include distance along with restricting the number of pedlars i.e. a reasonable distance away from Craft Fairs and Markets who may well have paid a large amount of money to trade in a specific place.
- List needs to be drawn widely enough to allow for all local circumstances to be taken into account as there are many variables across the many diverse towns and cities across the country. Also make provisions for large concert venues which regularly hold large scale concerts, but would not fall easily within in any of the circumstances as currently proposed.
- Add concerts and theatre performances, charitable, social and cultural events to the list of exceptional circumstances.
- Add provisions for restrictions on specific days of the week. This would enable local authorities to restrict the number of traders on peak trading such as Saturdays.

Disagree

One local authority who disagreed said that there is no need to limit the numbers, just repeal the pedlars act and the numbers will take care of themselves. This would unnecessarily complicate the administration and enforcement of the system.

Liverpool council said that it would be over-complicated and unrealistic to apply restricted numbers and circumstances.

Pedlars

Pedlars disagreed with the restrictions and one pedlar commented that they had never seen a genuine case of the number of pedlars causing a risk to public, and that it is very easy for councils to say 'No' to anything. This pedlar also asked who they should appeal to when a council says no.

Others

Similar to local authorities other restrictions people would like to add were:

- In streets where an excessive number of pedlars can cause Health and Safety concerns, mass evacuation routes and emergency service routes. Here large numbers of trolley being manoeuvred in a tight area or with large crowds could create a blockage of ingress or egress with the potential for a major incident.

One respondent had concerns about administering a system which restricted numbers? Who/how would such decisions be made? They suggested that it is far better to prohibit completely when these criteria apply.

LACORS agreed and said that discussion with a working group is necessary to ensure all operational issues have been properly addressed.

Another respondent said that the illustrations provide no evidence that pedlary is an issue, and they do not agree that the circumstances have been upheld with sufficient evidence to warrant a change in local authority powers.

Question 27: Do you have any observations in relation to the ideas aired in the final paragraph above on methodology and notice?

Local Authorities

The main concern of the local authorities was that day licences would be impractical and burdensome in terms of administration, and there were concerns around who would pay for this administration and issuing of day licences.

One local authority felt that a day system in place will not consider the needs of the applicant or those of the resident shop keepers; it would be best to issue a licence, and let the pedlar decide where they want to trade.

Reading council gave an example of what happens at the Reading Festival, where they issue an average of 25 additional street trading consents for a 3-4 day period on land around the perimeter of the festival. That way they can ensure that all the safe spaces are taken up by the legitimate traders. However, they always have an unknown quantity of pedlars arrive with their large trolleys, which cause considerable obstruction and disruption by their presence. Being able to regulate the number of pedlars in advance would make life much easier during the event.

One local authority commented that this will complicate the administration and enforcement. In the present climate when Council's are have to make serious cuts in the level of staff, who is going to fund this work?

One local authority commented that restrictions can be justified for example at Christmas periods or other times of peak congestion e.g. continental street markets, also whether they are required is dependant on the physical size of the area e.g. width of street and

proximity of entrances to shops and not just footfall of shoppers. In Leeds they designate all streets as consent streets; the only prohibited street is a private street accessing the city railway station. They do not want the legislation to be drafted in a way that would only allow them to impose restrictions where they already prohibit street trading.

Glasgow City Council feel that by restricting the definition of a pedlar to door-to-door sales, any other activity would fall within the ambit of street trading. In Scotland a temporary street trader's licence may be granted. However, if pedlar activity is not restricted as they suggest, they do not think that it should be permissible for a pedlar to apply for a pedlar's certificate on the day on which they intend to use it. The issuing authority should be given an opportunity to undertake thorough investigations into an applicant's character, and they recommend a reasonable period (e.g. 21 days) is provided before an applicant may be determined. They do not feel that this should negatively impact on an individual's ability to trade as a pedlar.

Nottingham City Council raised concerns about how the numbers of pedlars would be determined and the 'day licences' would be allocated; would it be on first come first served basis, and if pedlars did not attend by reason of weather, etc could their licences be reallocated? They were also concerned about how the cost of issuing extra licences or permits could be recovered by the licensing authority.

The City of Westminster Act 1999 has provision for temporary street trading licences to permit trading for a single day. This allows the council to regulate the numbers of traders in a street.

Many local authorities agreed that any restrictions on pedlars should be made known in advance, and the following suggestions were made to make this work:

- Display a notice in the specific street(s) in advance, advising of the intention to limit the number of pedlars on a certain day or for a specified period, and that they would also insert a clause limiting the number of times a 'day permit' would be issued to any pedlars to provide equal opportunity for pedlars. If the allocation of 'day permits' are not taken up in advance they would allocate any 'spares' on a first come first served basis and remove the limitation on those pedlars who had been allocated the maximum number of 'day permits'.
- A database of pedlars could be used so notifications could be sent to them along with publicising on the authorities own websites of restrictions etc.
- Where restrictions would be in place for a short period of time, temporary notices could be erected on lamp columns as a way of notification, and where restrictions are more permanent it would be reasonable to expect a local authority to publish a public notice in the same way as required by the LG(MP)A.
- Each council should have a policy available on their website / reception desk / licence offices and there should be a clear application process with clear terms and conditions, and information of restricted areas.
- Have an advance on-line application process, as issuing day licences on the actual day would be difficult to support / resource.
- Make it a condition in a pedlar's certificate to contact in advance a local authority in whose area they intend to trade e.g. 28 days advance notice would allow the LA to determine whether additional licences would be required.

- Pedlars could be provided with authority contacts at the time of certification, to obtain information about local authority restrictions.
- Consider on a local level the number of persons attending the local events referred to as well as the topography and layout of an area.
- Automatic restrictions should apply on pedlars where streets have been designated as prohibited for street trading purposes. This would be clear and unequivocal.
- Applications for a restricted number of day licences for events or festivals could be made via the national website on a first served basis. These applications could be made in advance for events which are advertised on the website. Enforcement officers could then have a list of pedlars to expect on the day, making the removal of unauthorised pedlars easier.

Pedlars

One pedlar commented that these ideas are very good, however they were concerned that in practicality the answer would always be 'no'.

Another commented that the idea does not appear to have a basis in evidence that a problem actually exists and anecdotal claims by local authorities or others are not sufficient.

One pedlar commented that they have never had a problem with too many pedlars being in the same place at the same time. This respondent also said pedlars can judge for themselves if there are too many of them in a certain area, and that it would not benefit any of them to try to trade in an over-crowded area. They ended by saying that to involve local authorities in this matter is completely unnecessary and would over complicate the situation.

Others

One liquor licensing officer pointed out that as pedlar certificates are renewable after 12 months and most events or reasons for restricting pedlars are usually planned in advance, it would seem reasonable that a schedule of restricted dates could be issued to pedlars for the coming year upon certificate application / issue.

One town centre manager said that they would hand a letter of intent for day licenses to limit the number of Pedlars within a certain length of time before the event. They would also implement a day license to allow for weather changes on a first come first served basis. To enable monitoring and enforcement a simple daily booking sheet could be e-mailed to all regulatory officers showing the name and the license number of those Pedlars issued a day license. Any Pedlar without the day license would be asked to leave.

Another town centre manager also suggested that one could go one step further if needed: to ensure that individuals do not take all the licenses on a daily basis there should be a clause limiting a pedlar to a maximum number of daily licenses within a set period. If there are still daily licenses available by a set time in the day then they could be offered to a pedlar who has exceeded their limit of consecutive licenses.

One respondent, a Business Improvement Group, said that the proposal to limit numbers is unworkable and that it is far better to prohibit pedlars completely if the criteria justify it.

One individual respondent commented that the consultation has suggested that licences themselves are a burden to the issuing authority, which would only be exacerbated by the issue of day licences. The transient nature of a pedlar allows them to move from town to town as they see fit. This might be judged on the day, according to the weather, the number of shoppers etc. Within this model of trading, the issue of day licences would be unworkable.

Question 28: Should street trading appeals in London be determined by the Magistrates' Court or the Secretary of State? Please give reasons for your answer.

Local Authorities

The local authorities who replied to this question unanimously agreed that street trading appeals should be determined by the Magistrates' Court. The following reasons were given:

- It would make sense that all appeals are determined by the Magistrates' Court.
- Seems proportionate and in keeping with areas outside London.
- This is consistent with other well established and effective licensing appeal regimes, and it is proportionate.
- The courts are used to dealing with such appeals, as is the local authority.
- Consistent approach nationally.
- Magistrates' Court provides effective safeguards which work well in authorities outside London.
- To ensure a fair uniform approach is upheld.

No local authority disagreed but one did say that appeals should be limited to Magistrates Court with no further appeal to the Crown Court. They also suggested that those matters which are subject to appeal should be reviewed, as some are inappropriate for determination by Magistrates' Courts.

Others

Most other respondents such as the town centre managers also agreed that Magistrates Courts were best placed to deal with street trading appeals as they are more than capable of analysing the arguments. The rest had no comments.

LACORS had no comments other than to say that any appeal system needs to be proportionate and consistent throughout the UK.

Services Directive

Question 29: If you are aware of any evidence to suggest that the conclusions set out above do not reflect the actual position either in respect of our perceptions of numbers of pedlars of services only or in respect of our understanding of the requirements of the services directive, please provide it. *Note that a pedlar of goods and services will need to be certified in order to trade as a pedlar of goods.*

Local Authorities

One local authority said that clear definition of services was needed, and that removing the requirement for certification of pedlars of services without such a definition could lead to argument and confusion concerning what is a service. Moreover, unrestricted numbers of pedlars of services could cause substantial problems for enforcement officers engaged in regulation of pedlars of goods.

Some local authorities are of the opinion that, as the Services Directive has instructed Member States to remove any authorisation which might act as a deterrent to service providers, there is very little point in arguing against it.

Others did not think that there are a substantial number of pedlars offering services only; as most pedlars sell goods or only sell goods and would require certification. However, one local authority did not understand why the pedlar of services has been removed from the scope but the pedlar of goods has been retained even though the number of pedlars offering services was low. Another commented that for the reasons of consistency all peddling activities should be brought "into the scope". If exemptions are made there is potential for "loopholes" being created thus making enforcement more difficult.

One local authority commented that pedlars of goods and services are required to hold the same certification as issued by the local authority. Furthermore, whether the pedlar wishes to operate on a temporary or ongoing basis, they should be required to apply for a pedlar's certificate and meet all of the requirements of that application. This will assist local authorities in regulating unscrupulous pedlars of services and add value and credibility to the genuine and honest pedlars that hold valid certificates.

Another local authority suggested that services provided by pedlars going from door to door should be covered by the Cancellation of Contracts made in a Consumers Home or Place of Work etc Regulations 2008.

Plymouth City Centre reported that they are currently experiencing difficulties with traders selling services such as 'paint-balling' and only moving when harassed. Another local authority mentioned that there are many organisations that promote their services on the street, (e.g. energy suppliers, breakdown assistance suppliers, etc), who do not purport to be pedlars and are not selling articles so do not come under the definition of street trading under the LG(MP)A either. However they still have a detrimental impact on the street and the visitor experience.

The Nottingham City Council Bill extends the definition of street trading to include 'the supplying of or offering to supply any service in a street for gain or reward'.

One local authority was concerned that although street traders who provide a service will continue to require to be licensed, pedlars who provide a service will not, and this may create a loophole which may be exploited. Another said that pedlars of services should be subject to street trading regulation, and that is justified under the Services Directive because of the impact they can have on public safety and highway management.

Further guidance is required on the rationale of the application of the directive.

Pedlars

One pedlar asked what protection do pedlars of services have 'in law' to be able to trade after their protection of a pedlars certificate is removed?

Pedlars.Info commented that a full audit of Pedlars of services has never been carried out and that only 1% of pedlars were contacted via the Durham Report. They suggested that there is no evidence that there are no Pedlars of services who could now become uncertified and possibly illegal depending on local legislation in the areas in which they have always traded or now choose to trade.

They made the following comments about the Services Directive:

"The Services Directive Article 9(1)(b) states 'The need for an authorisation scheme is justified by an overriding reason relating to the public interest'.

The Services Directive Article 9(1)(c) states 'The objective pursued cannot be attained by means of a less restrictive measure, in particular because a posterior inspection would take place too late to be genuinely effective.'

Kevin Davis BIS CCP on 4 November 2009 states 'We think that the requirement to have a pedlar certificate is a proportionate measure justified by the need to ensure that those with a criminal record are not allowed to sell services on the street and that consumers are able to know who it is that is selling the service so they can seek redress if something goes wrong' to allow an effective a posterior inspection".

This BIS argument justifies the continuation of the safeguard of the certification process.

The issue of discrimination of residency can be resolved by extending the residency throughout the EC. The issue of a single point of contact can be tied in with the national data base resolution with on-line certification.

Pedlars of services expect BIS to fulfil the obligation of Article 16 "Freedom to Provide Services 1. Member States shall respect the right of providers to provide services in a Member State other than that in which they are established*" which for UK pedlars extends their rights throughout EC. The consultation fails to provide any indication about how this will be achieved.

BIS have indicated the necessity for public security, and potentially public health, under Article 16(1)(b) and of proportionality under Article 16(1)(c)."

One pedlar who agreed with pedlars.info added that "this issue has been moved towards being determined arbitrarily during this consultation and on the basis "of no evidence" which suggests further review in both domestic and European courts. HMG has not

made proportionate response and there is thus “detriment” to upwards of more than 48 million people”

Others

The main point coming out here was a clear definition of what is a service? One town centre manager said that they have had ‘paint-ball companies’ come into the town centre set up a stall on wheels and work across a 15 metre wide street with four/five operators each using a pedlar’s license. Also the RAC/AA can also bring 3 or 4 people to operate in the same street. They anticipate that if the controls are tightened on the pedlars of goods then there will be a move into pedlars of services which will result in the pushing of the boundaries of what is a service.

Draft Guidance

Question 30: Is the checklist at the front of the guidance an adequate one-page summary detailing what legal street selling looks like? Please give reasons for your answer including anything you would like to see added or removed.

Local Authorities

Check-list

The majority of local authority respondents thought that the check-list is an adequate one-page summary that would meet the needs of local authorities and pedlars.

Some said that it was consistent with the proposed legislative changes and current case law.

Others felt that the check-list would allow for a degree of discretion amongst enforcement agencies (on issues such as trolley size) which is consistent with the findings of the courts that each situation should be judged on its own particular circumstances.

Some others commented that the checklist provided a clear illustration of the current difficulty in defining the difference between pedlar activity and street trading.

Some were concerned that the format of the checklist does not accurately reflect the complexity of the situation. While a simple approach is preferable, it does not make any reference to the detail contained in the full guidance document. The fear is that the checklist will be read and quoted in isolation which could lead to further conflict.

One Local Authority would like to add the requirement to produce a certificate to the check-list.

Cardiff Council Licensing Authority observed that the checklist does not reflect the position apparently taken by the courts in Cardiff where Magistrates as a minimum require evidence that the individual has remained stationary in one place for at least an hour before accepting that he/she has thereby infringed street trading legislation. The courts

also appear to accept that trolleys are of reasonable size provided it is possible for the individual to be able to move them.

One Local Authority observed that it is important for checklist to match the legal position if it is to have any relevance.

Another Local Authority commented that the list is a mixture of legal requirements and guidance. It is not clear which items are legislative and which are not.

Trolley size and moving around

Some local authorities said that they would like to see a more definitive description of trolley size. There were concerns over what is meant by reasonably sized, as what is reasonably sized to one person may not be to another person. This should be clearly specified in the guidance and not left to the individual to decide.

There was also comment that the lawful pedlary column and the unlawful pedlary column contradict one another because one says you can use a trolley while the other states do not use large trolleys. The Pedlars Act envisages a pedlar carrying his/her goods (one of the most important differences between a street trader and a pedlar).

It was suggested that “You can use a trolley” should be removed as this is where most of the confusion and misinterpretation lies, resulting in pedlars not acting as pedlars but setting up a stall and then street trading without a consent.

One commented that use of trolley and the interpretation of moving around is enabling and encouraging ‘pedlars’ to act unlawfully.

Canterbury Council observed that there was no guidance on “distance”. This has major implications in a small congested city such as Canterbury. Size of trolley is also very problematic and difficult to define; what might fit one street would not fit another.

Others argued for less ambiguity, for example the word “should” is inadvisable as it encourages ambiguity. In addition the word “large” should have better definition.

Other Local Authority comments

One Local Authority observed that pedlars target high footfall areas e.g. outside the entrance to a shopping centre and move only a few feet to and from the same spot. This is unfair competition for those businesses in the vicinity as the pedlar travelling from door to door does not target only houses 1-4 in any quiet area repeatedly throughout the day, but would select streets and target all the houses in the street.

One LA commented that people of other nationalities who do not speak and read English may have problems understanding the guidance.

Another LA commented that the guidance does not reflect the situation being experienced in there area (York). For example shoddy and dangerous goods being sold, harassment of the public, trade being taken away from the retailers, street pedlars detract from the shopping on offer in the town centre.

One local authority observed that the guidance does not deal with “legal street selling” (which includes pedlars, street traders with licences and consents, and (in areas where street trading is not regulated) any individual with or without an authorisation who chooses to trade there).

One local authority commented that if the guidance is an attempt to summarise pedlary (rather than legal street trading), all it does is summarise many years of (often conflicting) complex case law it achieves very little and in any event carries no weight.

Another observed that the correct way to clarify what a pedlar can and cannot do would be to prescribe, in primary legislation, the precise activities that pedlary comprises (including how long a pedlar could remain in one area).

Pedlars

Check-list

Some pedlars commented that the checklist is misleading and fails to take into account key points of case law. A pedlar does not have to be continuously moving between sales so as to show they are looking for their customers, and the BIS interpretation relies on one case law, namely *Chichester v Woods*. In this case there is confusion because an order 57 rule was not followed up in spite of it being ordered. There are several other cases where the judgements have stated a pedlar can stop other than reasons of sale which have not been taken into consideration when compiling the checklist and draft guidance.

Some pedlars proposed that BIS should review all the case law precedents and incorporate the current lawful activities of pedlars into the guidance. The draft contains many errors and is misleading to Local authorities and Pedlars alike as to what those current lawful activities are.

Some also commented that the statement “You must move to trade - keeping a reasonable distance from your last position” should be more specific as this is also greatly misinterpreted.

One pedlar highlighted that biggest problem is when a pedlar does not go town to town or street to street at all but stays in one spot all the time. He commented that if a pedlar does that, then he/she must be prosecuted.

Others

Both pedlars and local authorities noted that the checklist does not make reference to those places with Private Acts, or current Bills which affect a pedlar’s lawful activities.

Local authorities and Town Centre managers felt that there is need to adjust the wording to include “moving from street to street” and also to make it clear that moving up and down the same street is not moving place to place and is therefore unlawful. On the other hand, some pedlars maintain that there is no case law stating that you must trade from street to street.

LACORS believe that guidance would be better discussed and agreed by a working group, however they would like to see a simple “How To” produced by the Government for use by street traders and pedlars.

An individual commented that the current Act allows pedlars to expose for sale or carrying them.

Question 31: Do you think the draft guidance meets the needs of the target audience, i.e. enforcers and traders, including pedlars? Please give reasons for your answer.

Local Authorities

The majority of the local authorities felt that the guidance met the needs of the target audience, as it covers all the necessary aspects and possible options open at the moment under the current street trading and pedlary regimes.

However, one local authority commented that there has to be a way of stopping illegal street traders, and that words like “reasonable distance” don’t help, and again many local authorities (as in question 30) asked for a more definitive and stricter description of trolley size, as it was felt that this issue cannot be left to the individual pedlars to decide.

Two local authorities thought that the guidance was useful for background information only and to bring together the wealth of case law.

One local authority commented that the guidance deals reasonably clearly with what is a complex subject matter but in the absence of clarification of what amounts to ‘true pedlary’ it remains complex and not particularly user friendly. This was backed up by another Local Authority which was not convinced that the guidance could be used to explain to an illegal street trader why the enforcement action is being considered.

Cardiff City Licensing Authority commented that Pedlars operating in Cardiff City are organised and trained in evading the requirements of street trading legislation, therefore the guidance would be of little use in Cardiff.

Pedlars

Pedlars felt that the guidance did not meet their needs because it disregards case law precedent, and also does not cover the many lawful activities of pedlars in sufficient detail.

“Yes and No. The public the main “target audience” a mass of people, have not been sufficiently contacted. Criticism has been made from the beginning at Q.1 and throughout this response to the “consultation”: that terms as set out by the authors of this strange document are frequently WRONG. So it is with this “Draft Guidance” which may well meet its “needs of the target audience”, particularly “enforcers”, but doubt persists as to why there is, as here: “traders”, which then has to be conditioned by the addition of “pedlars” - who are traders and only exist as such but who are also denied lawful authority by the

composition of this URN 09/1074 and of its maladroit application which certainly denies any “degree of consistency of interpretation”

Others

One Town Centre commented that the guidance fails to convey information in a form which is readily understandable by the lay person. They felt that the guidance makes no attempts to clarify what is already very confusing legislation.

Question 32: Do you have suggestions for amendments to the guidance? If so please specify how the guidance might be reformatted, added to or subtracted from, and why.

Local Authorities

Very few respondents had suggestions for specific amendments to the guidance.

Over all the opinions of local authorities on the guidance as a whole were mixed. Several thought that there should be a fresh consultation on the guidance once it had been decided what the legislation is going to be.

Most local authorities welcomed any guidance that would assist in the interpretation of the legislation in relation to pedlars since this would be of benefit to both traders and enforcement officers and would be key to achieving a degree of uniformity of approach to street trading enforcement. However others felt that this was not a matter for which guidance was appropriate and that it should be dealt with by primary legislation to clear up any ambiguity, thus providing consistency throughout the country. One commented that the law is woefully out of date and needs to be updated – these were taken to be references to the Pedlars Act rather than the street trader licensing regime.

Some local authorities thought the guidance should include current seizure powers by the Police for persistent offenders so as to make it clear what can happen if “they” do not comply and continue to trade illegally.

One local authority suggested advice on avoiding causing nuisance by not trading in places designated as prohibited for street trading should be given, and another commented that the guidance needs to be no more than 4 pages, and written in clear language.

One local authority suggested that the guidance should be made available in various formats such as electronic, hard copy and copy for the visually impaired.

Another suggested that sections that refer to specific case law and legislation should be removed. This is because as case law and legislation develops, the information contained in the guidance could easily become outdated.

Pedlars

Some pedlars were strongly of the view that the draft guidance did not adequately reflect relevant case law and felt that, in some respects it was not accurate and might lead to further problems for them. They commented that the guidance should be re-written and re-formatted with the co-operation of pedlars “with legal opinion”. They believe the draft portrayed a lack of understanding about the lawful activities of a pedlar which illustrated their broader view that the entire consultation was incompetent.

Others

LACORS suggested that the detail of the guidance would be better discussed and agreed by a working group. However, they would like to see a simple “How To” produced by the Government for use by street traders and pedlars.

NABMA commented that the guidance is long overdue. They said the inadequate definition of a pedlar has been a source of concern for many years and led many local authorities to neglect enforcement action because of the uncertainty of the outcome and the level of resources required to take such action.

An individual suggested a complete re-draft, preferably by an issuing body that can be considered totally independent.

Question 33: If you have any other comments or observations, in particular any information on possible costs relating to the options (see Impact Assessment), we are happy to receive them as well.

Local Authorities

The main point raised here by local authorities who responded, was that fees and charges should be at an appropriate level to incorporate some of the enforcement costs and also to maintain national database.

Other comments from local authorities were:

- “Stipulation to pedlars must include info on - not stopping for more than 5 minutes; moving on 200meters; cannot return within 50 meters of other pedlar; must display their certificates.”
- “We would like one Act.”
- “Use plastic credit card type licences which will last longer than card. Start up costs will be more than guidance suggest - £100 cert fee might help here.”
- “New provisions should be self-financing through set level of fees. Local authorities should set their own fee levels.”
- Would welcome another opportunity to respond more fully to any proposals.

Others

There should be a central website (e.g. direct.gov.uk/pedlars) where members of the public can verify a Pedlar's certificate. After searching for a certificate number, the

website should show the Pedlar's name and photo, along with the name and contact details for the local Police station who issued the certificate and any other relevant information. The purpose of the website would be to re-assure members of the public that a Pedlar is legally permitted to carry out his trade.

Many households now have access to the Internet, and an increasing number have the Internet available on their mobile phone. If a member of the public was interested in purchasing something from a Pedlar, but wanted to check their legitimacy, they could ask the Pedlar to come back in 10 minutes to give them a chance to look up their details online.

One correspondent felt that the terms in with the executive summary were couched was derogatory to pedlars and therefore implied that the consultation had a hidden agenda. On a practical point they would have expected to be able to insert their comments into the original PDF file rather than, as they have done, copy a text version.

Annex B

Responders to Street Trading and Pedlary Consultation

Pedlars

Andrew Carter
Brian & Jack Gibbon, and Mike Parry
Frankie Fernando
Gary Armstrong and Lena Holt
Ian Kruger
Mathew Hicks
Meriel Campbell-Lloyd
Nick McGerr
Paul Holt
Pedlars.info
Peter Aston
Robert Campbell-Lloyd
Tony Furnivalis

Local Authorities

Bath and N.E Somerset Council
Bedford Borough Council
Belfast City Council
Bracknell Council
Brighton & Hove Council
Camden Council
Canterbury Council
Cardiff City Council
Chichester District Council
City of York Council
Cornwall Council
Crawley Borough Council
Dartford Borough Council
Doncaster Metropolitan Borough
Enfield Council
Glasgow City Council
Gloucestershire Licensing Officer Group (GLOG)
Herefordshire Council
Knowsley Borough Council
Leeds City Council
Liverpool City Council
Maidstone Borough Council
Manchester City Council
Medway Council
Mid Lothian Council
Milton Keynes Council
N.E Lincolnshire Council
North Norfolk District Council
North Somerset Council
Nottingham City Council
Oldham Council

Oxford City Council
Plymouth City Council
Reading Borough Council
Royal Borough of Windsor & Maidenhead
Sheffield Council
South Yorkshire Trading Standards / Barnsley
Metropolitan Borough
Southend Council Trading Standards
St. Albans Council
St. Helens Council
Stockton-on-Tees Council
Stoke-on-Trent Council
Swanage Town Council
Swansea Council
Swindon Borough Council
Tewkesbury Council
Torbay Council
Trafford Council
Westminster Council
Weymouth & Portland Borough Council
Wigan Council
Wolverhampton Council
Yeovil Council
York City Centre

Others

ACPO (Association of Chief Police Officers)
All Wales, Licencing Technical Panel
Avon & Somerset Police Constabulary
C Dugdale
Crawley Town Centre
Dorset Police
Fareham Town Centre
Federation of Small Businesses
Immitto Ltd
LACORS now LGR
Lincoln Business Improvement Group
Magistrates Association
Manchester Utd FC
NABMA & Retails Markets Alliance
Natalie Cookson
National Market Traders Federation
North Tyneside Town Centre
Paul Maunders
Poole Town Centre
Sharpe Pritchard
Steven McGowan
Sundance Fairtrade

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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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