



Department
for Business
Innovation & Skills

**Street trading and pedlar laws:
compliance with the European
Services Directive**

Impact assessment

NOVEMBER 2012

Contents

Contents	1
Street Trading and Pedlary legislation.....	2
Impact Assessment (IA)	2
Summary: Intervention and Options	2
RPC Opinion:	2
Summary: Analysis & Evidence Policy Option 2	3
Evidence Base (for summary sheets).....	4
Evidence we have considered regarding the abolition and deregulation	5
Description of options:	7
Benefits to police - Repealing the Pedlars Acts.....	9
Costs to police- Repealing the Pedlars Acts	9
Costs and benefits to Local Authorities	9
Change from 12 months to the option of granting Indefinite licences.....	9
Switch from hard copy to electronic trader licence applications	9
Familiarisation costs	10
Overall conclusion	10
RISKS.....	10
Risks of Repealing the Pedlars Act	10
One in One Out	11
Post Implementation Review	11

Title: Street Trading and Pedlary legislation IA No: BIS0187 Lead department or agency: Department of Business, Innovation and Skills (BIS) Other departments or agencies:	Impact Assessment (IA)		
	Date: 22/03/12		
	Stage: Consultation		
	Source of intervention: EU		
	Type of measure: Secondary legislation		
Contact for enquiries: Rachel Onikosi, 020 7215 5898			
Summary: Intervention and Options			RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£ 0 m	£ 0.42 m	£ -0.049 m	No
			NA

What is the problem under consideration? Why is government intervention necessary?
 Government must bring its legislation in line with the requirements of the European Services Directive (2006/123/EC) in respect of the street regime for England and Wales, namely Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982, (LGMPA) and the UK-wide Pedlars Acts 1871 and 1881. Member States and the EU recently agreed that the retail sale of goods which includes street trading and pedlary is within scope of the Directive. Intervention is necessary to ensure compliance with the Directive.

What are the policy objectives and the intended effects?
 The intention is to repeal the Pedlars Acts, and make amendments to Schedule 4 to the LGMPA to ensure compliance with the Directive. But in so doing, the Government is seeking to maintain a balance between the rights of both static and mobile traders (pedlars) and the necessary powers of local government to maintain a safe, vibrant and attractive trading environment. The intended effect is that the restrictions placed on pedlars and static traders should be the minimum necessary to protect public interests which also meet the requirements of the Directive.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1- Do nothing: However this is not a realistic option as we are obliged to comply with European law, which requires us to change conflicting national law.

Option 2 (Government's preferred option) - Repeal the Pedlars Act in its entirety, and amend several provisions contained within Schedule 4 to the LGMPA - this will be done using section 2(2) European Communities Act 1972(ECA) regulations.

No other options are presented as we believe this method of compliance with the Directive is the only possible option. However we invite views in the consultation.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: NA	Non-traded: NA	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY:

Date:

Summary: Analysis & Evidence

Policy Option 2

Description: Repeal the Pedlars Acts & amend several provisions of Schedule 4 to the LGMPA

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	negligible	0.049	0.42

Description and scale of key monetised costs by 'main affected groups'

Police potentially lose income from pedlars certificate fees- £49,000 or a PV of £420k (a transfer)

Other key non-monetised costs by 'main affected groups'

Familiarisation cost to business of the repeal of pedlars' certificates – negligible
Cost to Local Authorities of switch from hard copy to electronic applications – TBC but likely to be negligible

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	negligible	0.049	0.42

Description and scale of key monetised benefits by 'main affected groups'

Abolition of pedlars' certificates – certificate fee saving for pedlars (a transfer) (£49,000 or a PV of £420k).

Other key non-monetised benefits by 'main affected groups'

Abolition of pedlars' certificates – negligible time saving
There may be a moderate increase in competition in street trading from the liberalisation of the pedlar regime.
Local Authorities might save on their admin time and costs if fewer licence applications are processed as a result of licences being granted for longer than 12 months.
Police time saving- no longer processing pedlars' certificates
Switch from hard copy to electronic application – some negligible time saving by pedlars
EU traders – removal of obstacles to street trading in the UK

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
There is a risk that liberalisation of the pedlar regime could lead to an increase in illegal behaviour. This is not considered significant because evidence suggests that the Pedlars Act was not used as a tool to reduce or prevent illegal behaviour. Other tools have superseded it. We invite comments on this risk in the consultation.		

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0.049	Net: 0.049
	No	NA

Evidence Base (for summary sheets)

- **Problem under consideration;**

- The UK needs to bring its legislation in line with the requirements of the European Services Directive (Directive 2006/123/EC) in respect of the street trading regime, (i.e. Schedule 4 to the Local Government Miscellaneous Provisions Act 1982), and the Pedlars Acts 1871 and 1881. There are provisions contained within both pieces of legislation which either must be amended, or be repealed in order to ensure compliance with the Directive.
- The Directive, implemented into UK domestic law by the Provision of Services Regulations 2009 (PSR) aims to make it easier for businesses to set up and sell goods anywhere in the European Union. Specifically, the Directive prohibits competent authorities (for example, a local authority) from adopting procedures which are in fact barriers to the freedom of trade.
- At the time the Directive was implemented by the PSR, the retail sale of goods (for example, the nature of street trading and pedlary) was deemed not to fall into the definition of a service activity for the purposes of the Directive. However, following discussions in Europe between Member States and with the European Commission, it has now been concluded that the retail sale of goods is generally a service activity within the scope of the Directive. There is now consensus between Member States on this issue.

- **Rationale for intervention**

We have no alternative but to intervene as we must ensure that the UK laws in respect of street trading and pedlary comply with the Directive or risk infraction. However the intervention is still minimal on the basis that our legal assessment has suggested that we do not need to make huge changes in order to ensure that we reach compliance.

- **Policy objective**

In this section we consider the general policy objective of the Services Directive and the policy objective specific to this IA (regarding pedlary and street trading).

- **Policy objective of Services Directive (2006)**

The objective of the Services Directive is to help liberalise the European Economic Area (EEA) service sector, facilitating trade and further opening the market to competition. Implementation of the Directive is expected to reduce the uncertainty that service exporters face, as well as the administrative processes and time needed to comply with regulations.

- **Policy objective of this IA**

Our objective is to ensure compliance with the Services Directive through simplification and some liberalisation of the street trading and pedlary regimes.

This requires 1) repeal of the Pedlars Act and 2) Amendment of Schedule 4 to the LGMPA (national street trading regime for England and Wales) to reduce burdens on business.

1. Repeal of the Pedlars Act

This is necessary because

- The pedlars' certification scheme includes a residential requirement¹ which is explicitly prohibited under the Directive.
- The Act also imposes the requirement that an applicant must be of good character before a certificate can be granted. This provision cannot be justified under either Articles 9 or 16 of the Directive which limits the grounds on which a competent authority can impose an authorisation regime.

We have assessed the feasibility of retaining the existing UK legislation by considering what amendments could be made to the Act in order to ensure compliance. However, after weighing up the options, Government lawyers and Ministers have concluded that the Act needs to be repealed to comply with the Directive. This will also help simplify and remove unnecessary barriers to trade.

Evidence we have considered regarding the abolition and deregulation

In 2008, Durham University was commissioned to carry out some research in relation to street trading and pedlary.² Key findings of the Durham University research were that:

- Pedlars traded in a mobile and flexible manner, trading in areas which would produce the most return on any particular day.
- there was little evidence that 'certified' pedlars respecting laws on illegal street trading presented any problems in the city centres
- consumers valued the presence of pedlars, and continued to buy their goods
- local authorities found it hard to differentiate between genuine pedlars and illegal street traders and some local authorities tended to see the two in the same way
- local authority complaints were mainly about Illegal Street trading, and not about pedlars that were acting within the law.

The Durham University research clearly showed that it was not pedlars specifically that caused concern to local authorities, but rather illegal behaviour by street traders of all kinds. It is also clear that the Pedlars Act does not help to reduce or prevent illegal behaviour as other tools are used to tackle such behaviour, for example section 10 (1)(a) of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982, namely the offence of engaging in street trading in a licence or consent street without being authorised to do so, and section 137(1) of the Highways Act 1980, the offence of wilfully obstructing the free passage of a highway.

Durham University recommended that the Pedlars Act should be modernised and standardised as the certification system for pedlars was ineffective in controlling good character and it was too difficult in practice for local authorities to distinguish between mobile traders trading legally under the Act, and traders breaching the rules on (static) street trading.

¹ The Act requires that a pedlar be resident for one month in the area of the police station that he wishes to apply, in order to become eligible to submit an application.

² <http://www.berr.gov.uk/files/file49664.pdf>

The Durham research pre-dated the Government's conclusion that the Services Directive must be applied to the retail sale of goods and compliance with the Services Directive was therefore not considered by the University.

The Pedlars Acts effectively contain 3 elements which remain in force:

- the requirement for pedlars to be certified, obtaining the necessary certificates from the Police
- the requirement for pedlars to be of good character
- the definition of a pedlar – pedlars adhering to the definition would acquire certain rights to trade freely.

The Government believes that the first two elements of the Act are incompatible with the Services Directive.

The Government agrees that the current definition is unhelpful and out-dated. We are therefore proposing to recast the definition of a pedlar in draft regulations on street trading made under section 2(2) of the European Communities Act. The effect will be the same – that mobile traders (pedlars) which meet the new definition will be exempted from restrictions placed on static traders to trade freely on Britain's streets, but it is not sensible or logical to retain a separate Act in existence for the purposes of setting out a definition of a particular trade for which the only relevant regulations remaining are exemptions from other laws. It is much better legislative practice to cast the definition of pedlary within the remaining regulations which give rise to the substantive rules relating to pedlary.

Abolishing the Pedlars Acts will remove unnecessary barriers to potential mobile traders from other EU Member States seeking to benefit from the same rights as UK-based pedlars. As discussed in detail in the Risk section, it is not expected to lead to an increase in any alleged illegal activity as the Acts are not in any case an effective means of controlling illegal activity. This is controlled through the street trading legislation and various other measures to prevent obstruction of the highways and to protect consumers.

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2. Liberalisation of the street trading regime in England and Wales Schedule 4 to the Local Government Miscellaneous Provisions Act (LGMPA)

This is designed to:

- enable street traders to engage in trading activity more easily and
- reduce administrative burdens on street traders, and produce cost savings for them

The street trading regime regulates the activities of static street traders. It is applied and enforced by local authorities. In particular, it concerns the designation of streets, the granting and refusal of licence/consent applications, and the process for appealing against a local authority decision to refuse or revoke a licence or consent to trade.

The changes we are proposing to make are:

- i) street trading licences/ consents can in future be granted to children under the age of 17 years of age (unless it breaches other legislation designed to protect children) - currently the regime prohibits the granting of a licence/ consent to those under this age.
- ii) local authorities will be given the discretion of granting licences for extended periods (as long as this does not create a barrier to trade in localities where there is excess demand for street trading pitches) – currently the regime allows licences/ consents to be granted for a period of 12 months only.
- iii) electronic applications for licenses would have to be allowed and in the case of electronic applications, one photo can be submitted rather than two – currently the legislation specifies two photos to be submitted with an application made in writing.
- iv) reduce the number of discretionary grounds that a local authority currently has in regards to refusing or revoking a street trading licence to exclude grounds which would be incompatible with the Services Directive.

Description of options:

Option 1: Do nothing.

As mentioned above this is not possible as UK law must be aligned with the Services Directive.

Option 2: Use UK Regulations under s2(2) ECA to repeal the Pedlars Acts and make amendments to the national street trading regime. [This will be a straightforward process.]

- **Monetised and non-monetised costs and benefits of each option (including administrative burden);**

Benefits to business – (Repeal of the Pedlars)

Repeal of the Pedlars Act will result in the following:

Direct benefits

- Currently, pedlars are required to attend the police station and apply for a pedlars certificate. We have engaged with the group that represents UK pedlars who have stated that the time it takes to apply and subsequently be granted with a certificate can vary from force to force as it depends on the efficiency of the particular force and their knowledge of the law. For example, some police forces issue certificates on the spot, others have a centralised system, and it may take 7 – 54 days to receive a response.. As we have no evidence on which to assess how long it takes to fill in an application and attend a police station and the value of pedlars' time we will consult on this in more detail.
- The annual cost of a pedlar's certificate is £12.25.³ Statistics from the Durham University report, estimated that the yearly number of certificates that are issued range between 3000- 4,500. The group which represents UK pedlars estimates 4,000 pedlars. Therefore we can assume that once the Act is repealed, the savings to pedlars will be at around $4000 * 12.25 = £49k$, per annum (Present Value of around £42k). This would be a transfer from Police to pedlar but there should also be some saving in Police time.
- We will test these assumptions in the consultation.

Wider benefits

- Pedlars from other EU states will have the freedom to trade with no unnecessary restrictions placed on them. Liberalisation of services is expected to increase competition, increase diversity of suppliers and supply. This is not quantified as the impact, while important to some consumers, will be relatively small. We assume the impact will be fairly small because the total number of pedlars currently is around 4000 and the market is likely to be fairly fast moving and competitive already. We may expect some increase in the number of foreign pedlars but it is not known how many.

Benefits to business - (amendment of street trading regime)

Change from 12 months to the option of granting Indefinite licences:

- Our proposed changes will give local authorities an option of granting street trading licences/ consents for a longer period, but this freedom will be limited in practice by the need to maintain effective market access for new street traders seeking to enter the market. In cases where multi-

³ Section 5(3) of the Pedlars Act 1871.

year licences are possible, this will remove the administrative burden from those granted with these licences/consents annually. However, it is difficult to make assumptions about the savings to business that could be made from this on the basis that i) it is not known how many extended licences/consents will be issued to business, ii) this is a completely new and optional feature of the legislation which Local Authorities may or may not adopt, iii) the cost of street trading licences/ consents differ widely between local authorities.

- According to the Durham University survey, the cost of licences to business varied between nil and £10, 000, the average cost was £1000.
- In the consultation document we will seek evidence on the numbers of extended licences that the local authorities might seek to issue and the likely costs of such licences to business.

Change from submitting two photos to one photo for electronic applications:

- Our changes will result in simplifying the application process by allowing one photo to be submitted in cases of electronic applications. Currently the legislation specifies that two photos should be submitted, and that applications should be made in writing. If we assume that over time more traders will process their applications electronically, (as the legislation/ and local authority policies would expressly allow this) then this should reduce the costs and time burdens associated with obtaining hardcopy passport style photo's. Nowadays photos can be taken by use of mobile telephones, computers and laptops, and it is assumed that once taken these photos would be attached to an electronic application and sent to the relevant local authority with ease. We do not monetise these benefits as we expect that they are negligible and therefore it is not proportionate to estimate them in detail. However we will invite comments on this in the consultation.

Change from refusing licences to children under age of 17 years old

- Our change will also result in allowing local authorities to grant children under the age of 17 with a licence, (unless it breaches other legislation designed to protect children). As the street trading legislation currently stands, local authorities must refuse licences to children under this age.
- We assume that there will be some non-monetised benefit here as traders with children will be able to involve their children in the family business. We might expect that child traders will be able to offer goods suitable to children. However we doubt that this will have a significant direct or indirect impact. We would need further detail on how many children under 17 years old would apply for a street trading licence and we will attempt to consult on this.

Change – reducing the number of reasons that a street trading licences can be refused and or revoked

- There are currently statutory discretionary grounds that allow a local authority to refuse or revoke a street trading licence. However, our view is that not all of these grounds can be justified under the Services Directive, and we propose to repeal one, and limit the use of two of these grounds in order to meet compliance. However, to ensure that local authorities have sufficient grounds to refuse and/ or revoke a licence we intend to insert a new ground (which is compatible with the Services Directive,) which would allow a local authority to refuse a licence application on the basis that the street is unsuitable for the trading in which the applicant desires to trade.
- Generally, we think that the impact of limiting grounds to revoke or refuse licences is likely to be marginal, as very few licences are refused or revoked at present on grounds other than space limitations, and this ground would remain as a ground for refusal in any case, but we will be testing this assumption in the consultation.
- There might however be a slight effect of increasing competition for available street trading pitches, which might tend to increase the price of such pitches, but we cannot put a figure on any such effect at present as we would do not know whether local authorities would increase the price of pitches on the basis of the amendments we are proposing to make to the grounds.

- We will be asking for evidence on the costs and benefits of these changes in the consultation, how often local authorities might use the new ground and in what circumstances, and the extent to which they will affect street traders.

Benefits to police - Repealing the Pedlars Acts

At present, the Police hold the responsibility for issuing pedlars' certificates. Certificates last for a duration of 12 months, and are then renewable. There are on average 4000 pedlars in the UK. Repealing the Act will therefore remove the administrative burden from the police force.

We estimate that the cost of administering certificates for pedlars probably exceeds the £49k income which we estimate (assume a minimum of 4000 pedlars *12.25=£49k) flows to the Police from performing this function, but we have no evidence on the relative costs to the police of administering the Pedlars Act. To collect this we would have to survey police forces to estimate the length of time to process applications and issue licences, which would itself appear to be a disproportionate use of resources. However we will include this in the consultation.

Costs to police- Repealing the Pedlars Acts

The police will no longer be required to issue pedlars' certificates, so will lose the £49,000 they currently receive per year in pedlars' fees. As previously mentioned, this will be a transfer from the police to the pedlar, and is expected to be off-set to some degree by the benefit of not having to channel resources into processing pedlars' certificates.

Costs and benefits to Local Authorities

Change from 12 months to the option of granting Indefinite licences

As mentioned above our proposed changes will give local authorities an option of granting street trading licences/ consents for a longer period. In cases where multi-year licences are possible, this may remove some administrative burden from local authorities granting these licences/consents annually. This may save the local authorities some resource. We will explore this in the consultation.

Switch from hard copy to electronic trader licence applications

Local Authorities will have to accept electronic applications for street trading licenses. This may involve costs if the Local Authority has to establish an IT system and purchase IT equipment, but Government considers this unlikely as all local authorities already have computerised processes for other purposes and many already accept electronic applications according to the local authorities that we have spoken to. We assume that for those local authorities that do not currently process electronic applications have similar systems in place for other type of payments or licences, so the additional cost is unlikely to be significant. We will explore this in the consultation.

Furthermore even if such systems are not in place the Local Authority only needs an email address to receive the applications. The Local Authority could then print the application. This is equivalent to receiving the applications by post so the additional cost is unlikely to be significant, and will be outweighed, over time, by administrative savings from managing all street trading data electronically, but we will be testing this assumption.

Familiarisation costs

We believe that there will be no significant familiarisation costs. When a street trader comes to renew their licence they will find that they do not need to do one. Discovering that a licence is not necessary is likely to be significantly less onerous than reacquainting oneself with the application process. Hence familiarisation costs negligible.

Overall conclusion

Policy option 2 To ensure compliance with the Services Directive and avoid infraction proceedings our view is that Policy Option 2 is the only realistic option.

RISKS

Risks of Repealing the Pedlars Act

Increase in “poor character” pedlars

Our view is that there is a minimal risk of “poor character” pedlars increasing as the existing character assessment is not effective in any event. Evidence from the Durham report revealed that the current system is inadequate with major inconsistencies in enforcement practices between areas. The ability of a Police force to ensure that a pedlar, who may come from a different part of the country or even another EU Member State is of good character is clearly limited and many police forces therefore appear to apply minimum or cursory checks into criminal records. Our conclusion is therefore that:

- there are a significant number of pedlars that act in good faith and pose no problems to consumers or enforcement bodies – but many of these pedlars may not have had rigorous good character checks carried out against them.
- there are also a number of pedlars who do pose a risk to consumers, or to legitimate local authority interests, even after good character checks have been conducted.
- Certificates can be revoked should a pedlar be found to be behaving illegally but this is an ineffective remedy. Evidence of illegal street trading must still be gathered to instigate prosecution proceedings if a breach continues to occur. Local authorities suspect that in any event many traders with convictions nevertheless find ways to acquire new pedlar certificates with Police forces in practice unable or unwilling to deny certificates on the basis of minor infractions in the past, which may have occurred in an entirely different part of the country. Authorisation of traders’ resident outside the UK would be even more difficult to control.

Therefore the risk of repealing the act is minimal in this regard, and repeal is unlikely to increase the number of poor character pedlars to any significant degree. Illegal behaviour will still be addressed by local authorities using the tools set out in other legislation, and abolition of the Pedlars Acts will not change this.

In any case, our assessment is that the Government has no choice but to abolish the Pedlars Act to comply with the European Services Directive.

Risk of child protection issues

- Under the Pedlars Act, an applicant must be above 17 years old before being considered for a Pedlars certificate. We have considered the situation of children becoming pedlars once the Act is repealed, and have concluded that as the existing child protection laws⁴ will apply, we have little concern.

⁴ Such as minimum age for working in a shop is 13.

Peddling is a legitimate enterprise, and to refuse children to engage in the activity would go against the desirability of encouraging entrepreneurship. However, it is highly likely that children peddle under the current regime, of which any breaches are dealt with by the police or local authority. Therefore any breaches of child protection issues will continue to be dealt with by these enforcement bodies.

Risks of issuing street trading licences /consents beyond a 12 month period

While it is currently possible for a local authority to protect established traders against competition from newcomers (for example by grandfathering their rights to trade, as long as they abide by the license conditions and denying access to newcomers on grounds of lack of available pitches), it might appear even easier to protect insiders for longer periods, when the obligation to renew licenses annually is removed.

However, this effect is not expected, because denying effective access to newcomers would itself be a breach of the Services Directive. The impact of more flexible licensing periods will therefore be tempered by the need to maintain effective access overall. Local authorities which face excess demand for pitches will have to be particularly careful to ensure that newcomers have a periodic opportunity to bid on a fair and equal basis for any pitches which are available.

One in One Out

Out of scope as it is an EU directive.

The changes are not expected to create significant costs or benefits to business. On balance there is likely to be some saving to businesses particularly as a result of the abolition of the Pedlars Act which will remove the requirement for pedlars to register.

However these changes are required for compliance with the Services Directive hence any theoretical OUT (however small) is a part of compliance with an EU Directive and is not considered as an OUT for the purposes of the One In One Out rule.

Post Implementation Review

The intention is that the legislation could form part of any review of the Services Directive in the future.

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