

**Responses to BIS and Scottish Government Consultation on
Modernising Street Trading and Pedlars Legislation - Local authority
responses A to H**

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BATH & N.E. SOMERSET COUNCIL

F.A.O. Deba Hussain or Roger Dennison

Dear Deba, Roger

Please find below comments on the consultation on Street Trading and Pedlar laws, the comments are from the officers of the authorities Licensing Team.

Should you require clarification on any of the comments made then please contact me at the address below.

Regards

Andrew

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

Yes. We think that certification should be abolished and all traders dealt with under the Local Government (Miscellaneous Provisions) Act 1982. However, all subsequent answers are given on the understanding that this will not be the case, and that some form of certification system will be employed.

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

Yes. We think that the following phrase should be removed from the second bullet point i.e. 'keeping a reasonable distance from their last sales position'. What is reasonable? It only leads to conflicting views, and makes enforcement more difficult. Pedlars should NOT stop unless it is to make a sale.

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.

If a trolley is to be allowed the size should be specified. The suggestion that 'a small means of transporting goods e.g. trolley to carry stock' is not good enough. What is 'a small means'? Again it leads to different opinions and makes enforcement difficult. We feel that goods should be carried and no form of trolley should be used.

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

Yes. Pedlars should fall within the remit of the Local Government (Miscellaneous Provisions) Act 1982.

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.

If certification is retained then updating the certificate is essential. At the moment several pedlars give false details to obtain a certificate and these details are never checked. Only last week we received correspondence returned by the Royal Mail stating 'not known at this address'.

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.

No. Dates and places of birth would assist.

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

Yes.

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.

No. dates and places of birth should be included.

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.

No. We feel that service providers should remain excluded.

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?

Yes, but more clarity is needed. A list of relevant offences should be issued which precludes a person from obtaining a certificate. Furthermore if evidence can be produced that the person is not a fit and proper person then a certificate should not be granted to that person. This could include information obtained from other responsible authorities but which has not led to a conviction.

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

No. Unless there is absolute direction on how to implement the system there will always be inconsistencies. The current system used by the police is an obvious example. Some forces take the matter very seriously and have excellent procedures in place. Other forces treat it as a low priority and have a 'laissez faire' attitude which allows the system to be abused which affects the whole country.

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.

Yes. As long as the local authorities are given the necessary resources they have a greater experience of dealing with applications. They are more likely to treat it seriously as most police forces it appears, treat it as low priority.

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?

Yes.

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

A brilliant option. It would make things simpler for all concerned. The Pedlars Act should be repealed. All street trading should be covered by the Local Government (Miscellaneous Provisions) Act 1982.

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

Yes.

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

Not necessary as each local authority would be responsible for their own area. If a trader wishes to trade in several areas he/she should obtain the necessary licence/consent from each Authority where he proposes to trade. National certificates would not exist.

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

We do not support this suggestion. No exemptions should be allowed. Pedlars illegally trading are the problem. We have big problems on certain occasions e.g. Bonfire Night or Christmas Lights Switch On Night, when scores of illegal pedlars appear and cause obstructions. There are no need for exemptions. Let the Local Authorities manage it. They know best what local problems need to be addressed and can deal with them effectively without complicating the issue by allowing exemptions.

Enforcement

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

Our preferred order is D,C,B,A.

Question 19: Should Local Authority Enforcement Officers be given powers to: (1) Issue fixed penalty notices, & (2) Seize goods, with forfeiture by order of the court? Please give reasons for your answer.

Yes, but FPN's should only be given if the certification process is robust enough to trace offenders who do not pay. Seizure is the best deterrent, as experience has shown in the past that on the occasions when the police have done this when they are not satisfied with offenders details, it has had the effect of clearing the city centre for weeks. Unfortunately the police do not have the resources to deal with offenders and have only seized goods when the offending has been extreme.

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?

Obviously we have had no experience of FPN's for this type of offence, but as stated at Question 20 seizure has had dramatic effects on the removal of illegal traders in the city centre. To our knowledge some places such as Cardiff, Gloucester, & Devon & Cornwall seize goods on a regular basis.

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.

We are happy that the list is correct.

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

For first time offenders we feel that the level should start at £60 and reviewed regularly. Perhaps a sliding scale should be introduced whereby the level should increase if persons continue to offend. The fine should be set at a level which acts as a deterrent.

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

We strongly disagree with the Department's perception that pedlars are not the cause of the problem. The pedlars definitely are the problem. Very few operate legitimately and comply with the terms of their certificates. The best way to deal with them is to repeal the Pedlars Act or introduce seizure of goods powers.

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.

No. Pedlars need to be controlled more stringently than they are at the moment. Issues of personal details, taxation, shoddy goods and accountability need to be addressed.

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.

There is no need to limit numbers. Just repeal the Pedlars Act and the numbers will take care of themselves. There is a big enough problem as it is. Who will count the numbers of pedlars on any given occasion? It would unnecessarily complicate the administration and enforcement of the system.

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?

No. We disagree with suggestion. See answer 25.

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

The whole concept is seriously flawed. This will complicate the administration and enforcement. In the present climate where Council's are having to make serious cuts in levels of staff, who is going to fund this work?

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.

Not applicable to our area.

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.

We agree that very few pedlars trade using services only. 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.

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.

Yes

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.

Yes.

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.

No.

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.

No.

BEDFORD BOROUGH COUNCIL



BEDFORD BOROUGH COUNCIL

Borough Charter granted in 1166



Chief Executive: P.J. Simpkins

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Date: 3 December 2009

Dear Ms Hussain

Street trading and Pedlary Laws: A joint consultation on modernising Street Trading and Pedlar Legislation, and on draft guidance on the current regime

The purpose of this letter is to provide the response of my Council to the Department for Business, Innovation and Skills' consultation paper on modernising street trading and pedlar legislation and guidance issued on 6 November 2009. This consultation paper has been considered by my Council's General Licensing Committee and its comments are set out below:

- (1) The consultation is welcomed as an acknowledgement of the need to modernise the legislation concerning street trader licensing and pedlars. The remedy referred to in the consultation paper of revoking the Pedlars Acts and incorporating provisions concerning Pedlars in street trading legislation would be the most sensible suggestion of the way forward.
- (2) Those proposals which would transfer the regulation of pedlars from the Police to street trading licensing authorities are welcomed and supported. Clearly, any fees chargeable would need to fully recover the cost of such regulation including the production of identity badge style certificates. The creation of a national database of pedlars is also welcomed and the cost of this would also need to be accounted for in pedlar certificate fees. Further, the arrangements under the Licensing Act 2003 by which applicants for Personal Licences may be notified to the Police and the Police may object to the grant of such a Licence on crime and disorder grounds seems a useful basis to be applied to the new regime for regulation of Pedlars by Councils.

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- (3) The proposed power to issue fixed penalty notices in respect of street trading offences would be a significant improvement to the enforcement regime available to licensing authorities. Such a system would provide a proportionate and timely response to breaches of legislation. The Council would also wish to see powers of seizure of goods being offered for sale from unlawful traders. Council Enforcement Policies must take account of the national Regulators' Code and, as such, must be proportionate to the risk to the public posed by breaches of regulatory requirements. Accordingly, the seizure of goods would be limited to those circumstances where, following analysis, other measures would not achieve compliance. However, having the power to seize goods would enable the Council to deal firmly and swiftly where the risk justified such action.
- (4) The proposed power to introduce local controls on Pedlars (such as maximum numbers in designated areas) has a lot to be said for it. However, this is likely to generate a patchwork of different local restrictions across the country. As such, it does not appear to fit well with the current national regulation of pedlars. It would be far more effective if national restrictions were applied to Pedlars and this Council supports the restriction used in many Private Acts on this matter. In such Private Acts, Pedlars trading by virtue of a Pedlars Certificate would be restricted to trading "house to house". It is this definition that this Council proposes should be adopted.
- (5) The proposed guidance would need to be re-examined if and when the law on street trading and pedlars were modernised as proposed in this response.

If you require any further information or wish to make enquiries of the Council in relation to its submission of comments, please do not hesitate to contact me.

Yours sincerely



Philip Simpkins
Chief Executive

BELFAST CITY COUNCIL

From: Henry Downey [mailto:DowneyH@BelfastCity.gov.uk]
Sent: 02 March 2010 11:27
To: Dennison Roger (CCP)
Cc: Trevor Martin; Stephen Hewitt; James Cunningham
Subject: Consultation Document - Street Trading and Pedlary

Please find attached a response to the Department for Business, Innovation and Skills' consultation document on the modernisation of Street Trading and Pedlary Legislation which was agreed by Belfast City Council's Licensing Committee at its meeting on 17th February.

The response was ratified without amendment by the Council at its meeting last night.

Please contact Mr James Cunningham, should you require clarification on any aspect of the response.

His telephone number is 028 90320202 extension 3375

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[Committee Administrator](#)

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COUNCIL RESPONSE

Street Trading and Pedlary Laws

Certification Process

Question 1: Do you agree that the definition is in need of updating and clarifying?

Belfast City Council agrees that the definition of Pedlar needs updating and clarification on the role provided. A revised definition of a Pedlar is a priority and if the Government is convinced that Pedlars are to continue then a much more simplified definition is required.

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

Belfast City Council believes that for effective regulation of street trading and pedlary the GB definition for Pedlars should be the same as is defined within the Street Trading Act (N.I.) 2001, 'trading is carried out only by means of visits from house to house'.

The Council is concerned that the possible suggested definition which will allow for a small trolley to carry stock, will in practise, become a stall and a Pedlar will effectively become a mobile trader competing with legitimate Mobile Street Traders. The Licensing of Mobile Traders is dealt within the Street Trading Act (N.I.) 2001.

It must be remembered that the ability to trade on the public highway should not be regarded as a right in perpetuity, but a privilege, and there may at any time be competing interests, quite often important public interests, relating to free passage over the highway, safety, amenity of the area and others which must take precedence.

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.

Belfast City Council agrees that should there be specific mention of a trolley and of other acceptable receptacles that the Pedlar may wish to use, the permitted size of the trolley/receptacle should be no larger than 250 litres or 100 x 50 x 50 cm.

Consideration should also be given to where there is a 'cumulative' problem with Pedlars. In such cases, if the Pedlars are all selling similar goods, then the local authority should be given powers to limit the number of pedlars peddling together.

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

Belfast City Council would contend that it would be better to refer to a 'receptacle that can be carried' e.g. a bag or rucksack. This would be more akin to the spirit and purpose of a Pedlar and stop illegal mobile street trading.

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.

Belfast City Council agrees that updating the certificate and definition as described will make it easier for enforcement officers. The Council is however concerned that a problem may arise when pedlars visit Northern Ireland and try to trade as described in the proposed definition, as this would be deemed illegal street trading in Northern Ireland. A consistent approach across the UK is therefore called for.

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.

Belfast City Council believes that Pedlars should have public liability insurance as a Condition of their certificate.

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

Belfast City Council agrees that a national database will assist with enforcement and certification. The Council would however argue that Pedlars should be limited to the area of the local authority to which they apply.

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.

Belfast City Council agrees with the information to be held, but would additionally like to have the expiry date of the Pedlars public liability insurance included on any certificate.

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.

Belfast City Council is of the opinion that the vast majority of pedlars deal in sales as opposed to services. In this respect it is right that pedlars should fall outside the EU Regulations, but they should fall within the provisions of the street trading legislation and the responsibility for licensing should reside with local authorities. This would provide consistency in the way licensing arrangements are applied.

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?

Belfast City Council agrees there needs to be a change to the terminology used. However, the Council is concerned that the proposed change of terminology will allow for ambiguity and believes that it will not allow for a consistent approach with regards the suitability of individuals to be Pedlars. A clear 'what is meant' will be required in the definition of the terminology within the Legislation or Guide.

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

The proposed criteria will not allow for a consistent approach with regards the refusal of applications. The Government will need to produce guidelines for what they believe misconduct or sufficient reason to mean. As previously stated the proposed terminology allows for ambiguity.

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.

Belfast City Council agrees that responsibility for the issuing of Pedlars certificates should be transferred to local authorities. Local authorities already have the expertise in dealing with licences for a wide range of activities and could accommodate the Pedlar Certificate into their regime. The City Council is however concerned that BIS has not consulted the 26 district councils in N.I. and the Police Service of Northern Ireland on this issue at this stage.

It is in the public interest that a council should consult with the Police, Roads Authority, local residents and local shops and other street traders/pedlars that have a legitimate interest in the outcome of a Street Trading/Pedlar application. This is to minimise the risk of a licence/certificate being granted and subsequently resulting in public disorder, removal of protection to the public and a cumulative adverse environmental impact on the vicinity of the trader.

The current licensing arrangements are totally inadequate and do not provide any sort of assurances regarding the fitness or standing of an applicant to be a Pedlar. There are no proper arrangements for the review or renewal of certificates and there is no central record of Pedlars. Given that police resources are already stretched to capacity it makes sense to give this responsibility to licensing experts in local authorities. The Durham Research confirms that 'Police forces would prefer not to issue certificates'.

It is accepted that the police will still have a role to play through the criminal record checks process. There are a number of agencies such as Access Northern Ireland, Criminal Records Bureau and Disclosure Scotland who carry out this role and reduce the police burden. As a prerequisite for a Pedlars Certificate it is suggested that the applicant must produce a criminal record check certificate issued by one of these bodies for the area they reside in, as part of their application.

Pedlars should be limited to the area of the local authority in which they apply. A local authority is best placed to administer its own area and can best determine the appropriate levels of street trading and pedlary. This is particularly relevant where there is a cumulative problem with Street Traders and/or Pedlars. In such cases, if the traders are all selling similar goods, then the local authority should be given powers to limit the number of traders trading in its area. Belfast City Council does not accept that introducing licensing arrangements of this kind will inhibit Pedlars activities.

Belfast City Council believes it is important that local authorities are able to control the number of Pedlars Certificates issued on a particular day and operating licensing arrangements in this way will enable this to be done effectively.

There is already provision for the issue of Temporary Street Trading licences and therefore the issue of daily or periodic Pedlar Certificates would simply be an extension of what already exists.

With the provision of online information and application arrangements there is no reason why a person wanting to obtain a Pedlars Certificate in a particular town should not be able to do so expeditiously.

It is also right that the process of considering applications for Pedlars Certificates should be a meaningful one. The current application form, in Schedule 2 of the 1871 Act, contains insufficient information to enable a proper assessment of a person's suitability.

Local authorities already have the street trading licensing procedure which can be adapted as appropriate and, more importantly, they have the infrastructure to deal with any disputes regarding the refusal of any application.

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?

Belfast City Council is content with the process for refusal and the right of appeal.

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

Belfast City Council is disappointed and concerned that there is a fundamental misunderstanding by the authors of this report on the role of Street Trading and Pedlars in Northern Ireland. Pedlars are currently issued a Certificate which allows them to trade across the UK, which includes Northern Ireland. If the Government is of a mind to repeal the Pedlars Act, consideration should have been given to how Pedlars residing in Northern Ireland would be licensed. The Street Trading Act (N.I.) 2001 would also require an amendment to allow for all of the relevant provisions relating to Pedlars to be incorporated.

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

Belfast City Council agrees that with further work this option would be viable particularly in Northern Ireland as the Street Trading Act (N.I.) 2001 is administered by all 26 district councils.

As already stated local authorities already have the expertise in dealing with licences for wide ranging activities and could accommodate the Pedlar Certificate into their regime.

Given that police resources are already stretched to capacity it makes sense to give this responsibility to licensing experts in local authorities

Question 16: *Are there other ways of maintaining the national access to Pedlar Certificates other than under the Pedlars Act?*

Yes, through street trading legislation.

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

The Government should introduce UK wide legislation to regulate street trading and pedlars. This legislation should be modelled on the Street Trading Act (N.I.) 2001 and the Westminster City Act 1999, as these are probably the best two pieces of legislation currently existing.

Enforcement

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

Belfast City Council would contend that the best option is Option D where similar powers to those in Northern Ireland are given to local authority enforcement officers to deal with illegal street traders.

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

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

Please give reasons for your answer.

Belfast City Council believes that both options should be given to local authority enforcement officers. Experience here in Belfast has proven how effective these powers can be. The City Council has 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 power here in Northern Ireland, in London and elsewhere. The evidence collected by the Council suggests that such action is effective.

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?*

Experience here in Belfast has proven how effective these powers can be. Prior to 2001, when the street trading legislation

changed to include the above powers, Belfast had over 50 illegal stalls, including hot dog sellers, working in the City centre. With the power to seize and the forfeiture of the goods by order of the Court the Council managed to regulate the situation. The city currently has no illegal city centre traders and now has 17 licensed, regulated street traders in the City centre.

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.

Belfast City Council has concerns regarding issuing Fixed Penalty Notices for offences where unlicensed street trading or pedlary has been committed or for borrowing or making use of another's Certificate. Experience has shown that such individuals will frequently not give correct details and as such the FPN will be worthless. The sanction of power of seizure is much more effective.

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

The Street Trading Act (N.I.) 2001 allows Councils in Northern Ireland to issue Fixed Penalty Notices; the level is currently set at £50, with failure to pay resulting in prosecution. Belfast City Council has found that this level of penalty has been effective in dealing with Licensee enforcement. It is recommended that the Council receive the revenue from these FPN, not the Courts.

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

Belfast City Council agrees with the Department's general perception of illegal street trading and 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.

Belfast City Council agrees with the Department's view, as our experience in Northern Ireland with the Street Trading Act (N.I.) 2001 has demonstrated that with adequate enforcement and clarification on pedlary, licensed Street Traders and legitimate Pedlars can coexist happily

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.

Belfast City Council agrees that local authorities should be able to determine a number of pedlars that can operate in their area. This will assist in providing balance between street trading activities and the impact of pedlar activities. On some occasions the restriction on the number of pedlars and street traders is justifiable, when there is a lack of space, health and safety reasons or there are already sufficient traders trading in the goods or service. This can be done effectively by operating the licensing arrangements as described previously.

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?

Belfast City Council does agree with the list, however, in Northern Ireland such circumstances as outlined in the report would be dealt with by way of a Temporary Street Trading Licence. The Council still contends that Pedlars should only trade by means of visits from house to house as per the Street Trading Act (N.I.) 2001.

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

The Street Trading Act (N.I.) 2001 allows district councils here to issue Temporary Street Trading licences. These are generally issued for festivals and sporting events, including in 'restricted areas' where street trading would not normally be tolerated. Belfast City Council agrees with the final paragraph and contends that pedlars should have to apply for these temporary licences.

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.

Belfast City Council does not have a view on this question.

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.

Belfast City Council is not aware of anything to suggest otherwise.

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.

Belfast City Council would like to see reference to the Northern Ireland situation included in the checklist at the front of the document, with regards to what a pedlar is allowed to do in Northern Ireland. Undoubtedly the checklist will become a leaflet which will be handed out to pedlars and as they are allowed to trade across UK, which includes Northern Ireland, it is important that specific regional variations are included at the front of the document.

The Council would suggest 'Pedlars are entitled to trade within the terms of their certificate, except in Northern Ireland, where all pedlar activity is restricted to house to house trading'.

Belfast City Council has noticed a large increase in the number of pedlars with English addresses 'peddling' in the City centre, particularly during the summer at large events and festivals. This has caused confrontation between enforcement officers and the Pedlar who is not aware of the Northern Ireland Legislation.

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.

Belfast City Council commends BIS for the guidance on street trading and pedlars. The guidance, with a few amendments (listed at question 32), would address the needs of the target audience. The current inadequate definition of a pedlar has been a source of concern for many years.

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.

Belfast City Council would suggest the following amendments:

3. Paragraph 6.17 which relates to street trading in Northern Ireland should be after 'Civic Government (Scotland) Act 1982'. The Northern Ireland Paragraph would be Paragraph 6.15.

Street Trading in Northern Ireland should not be under a Section relating to Private Acts of Parliament. The Street Trading Act (N.I.) 2001 was not a Private Act; it was an Act of a devolved administration (NI Assembly).

4. Section 11 'What enforcement powers do local authorities have?' -details of the powers of enforcement used in Northern Ireland should be listed here.

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.

Street trading and pedlar activities have a number of similar characteristics and there is a need to preserve consistency and balance in the provision of such activities.

Fees must be equitable and reviewed periodically and local authorities are best placed to do this. The Durham Research highlights that street trading licences are issued with ‘an average price of approximately £1000’. Daily licences ‘average £40’. Against this background the current annual fee paid by pedlars of £12.25 is totally unsustainable taking into account that many pedlars will organise their visits to correspond to the busiest trading days to make maximum profit.

Making provision for stronger enforcement action by seizure of goods will assist in effectively controlling all aspects of street trading and pedlar activity for the benefit of licensed individuals.

BRACKNELL COUNCIL

The response of Bracknell Forest Council as follows:

1. Yes.
2. No.
3. Yes, a maximum size should be clearly specified to avoid confusion. As an idea of appropriate size, no larger than a medium suitcase or shopping trolley would maybe be fair, to allow transportation of goods.
4. The trolley should not be capable of being set up to use for display as a stall - if it is for transporting goods then it should not be capable of converting to stall format.
5. Yes, especially a photograph for identification purposes.
6. Yes.
7. Yes.
8. Yes.
9. I do not feel pedlar service providers require a certificate.
10. Yes.
11. Yes.
12. Yes, as I feel it is of greater relevance to local authorities.
13. Yes.
14. This would seem to be a sensible option. We have adopted the 1982 Act.
15. Yes, but you would need to speak to any authorities who have not adopted the 1982 Act.
16. Not known.
17. This seems more complicated. If you have a number restriction, how would this be enforced? All local authorities would have different 'rules' and this would cause chaos and confusion, not least for the pedlars themselves. This needs more thought. We do however appreciate that local circumstances will differ between authorities so a flexible approach is important.
18. Option D would be the preference, though there is always the problem that we do not have powers to identify those pedlars who have no certificate or refuse to provide it.
19. Yes, especially in respect of seizing goods as this would assist with consumer protection issues.
20. Who will be enforcing if it is not local authorities? The police have enough to do with crime and disorder issues so for them this is very low priority.
21. Yes.

- 22. Comparable with similar medium level offences - I don't have similar details to hand.
- 23. Agree.
- 24. Yes.
- 25. Yes.
- 26. Yes.
- 27. None.
- 28. Magistrates' Court - for consistency.
- 29. None.
- 30. Yes.
- 31. Yes.
- 32. No.
- 33. Nothing to add.

Kind regards,
Laura Driscoll
Licensing Team Leader
Bracknell Forest Council

BRIGHTON & HOVE COUNCIL

Hi

I attach comments from Brighton & Hove Business Forum on the recent pedlars Consultation document.

Soozie Campbell

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*Soozie Campbell

City Centre Manager

*Tel: 01273 380040

Email: scampbell@brightonbusiness.co.uk

Brighton & Hove comments on pedlar's consultation

Ways of making the street trading and pedlary regulatory regime more proportionate and effective. This includes 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. **No comment**



Providing local authorities with additional enforcement options in respect of illegal street trading. **Agree**



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 are for maintaining the current position whereby a certificate authorises trading throughout the UK. **Should be transferred to LA and should be restricted to operating in the town/city where it is issued and the LA should have the option to impose restrictions and conditions upon the licence.**



Consider introducing a means by which, local authorities might exert proportionate limits on certified pedlar activity in designated areas. **Strongly agree and preferably in consultation with established businesses**



Options for revoking the Pedlars Acts and providing for adequate regulation of itinerant traders within the street trading regime. **Revoke the Pedlars Act and make no provision for itinerant street traders. The very concept is 500 years out-of-date. We believe that pedlary is anachronistic with modern city/town centre operation and should be banned. It is the cause of enormous resentment from bricks-and-mortar retailers who work hard to create a street scene and an agreeable ambience in their trading locations (and pay handsomely in terms of rent and rates) only for fly-by-night pedlars to ride on the back of their efforts without contributing anything.**



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



CAMDEN COUNCIL

Dear sir/madam

Having read your report, one of the key areas that could be expanded upon and is of interest is the statistical context to street trading and pedlary. The sort of information that would be useful to see included is firstly the numbers involved in this activity in terms of street markets/ stalls traders/ turnover etc. Mainly so one can understand their economic contributions nationally; it would certainly provide some clarity in terms of the proportions involved.

From a policy making context this information would be of great use. Central Government doesn't appear to collect this information comprehensively. This leaves information that is provided by market interest organisations i.e. NABMA – and the data and messages do not always appear very objective.

For example, there is currently a perception at the moment that street trading is in decline and all the prominent reports appear to keep citing the same report (i.e. the First national retail markets survey by N Rhodes – largely influenced by NABMA) and the statistical underpinning is quite limiting as the raw data is not revealed to any degree to be useful in a comparative level, etc.

So it would be useful to understand the background to this economic activity, their current status/situation and therefore presented somewhere in this report. More specifically if you have any statistical data that you could share with us it would be most appreciated.

With thanks

Rosita Aiesha
Town Planner
Planning
Culture and Environment
London Borough of Camden

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6
Town Hall Extension (Environment)
Argyle Street
London WC1H 8EQ

CANTERBURY COUNCIL

Please find attached the response from Canterbury

regards
Roger Vick
Commercial Health Manager
Canterbury City Council
01227 862214
07753980013

STREET TRADING AND PEDLAR LAWS **CONSULTATION** **RESPONSE BY CANTERBURY CITY COUNCIL**

1. Yes
2. Distance requires definition more precisely, as does term transport.
3. Should not have a trolley –method of transport should be suitcase or smaller. If forced to have trolley then size should be no bigger than 0.25 cubed.
4. See 3 above –pedlars should carry goods for sale in bag or suitcase ie something that can be picked up and carried-not pushed or dragged..
5. Yes-Certificate should be similar to that issued for taxis or mirrored around the personal; licence –Licensing Act 2003-It also needs to be logged and held on a national database.
6. Certificate should confirm possession of public liability insurance , address of holder and date of birth as well as photograph and issuing body.
7. Yes
8. See 6
9. Yes-provision of services such as bookings such as for paintball games held elsewhere, insurance, energy sales. Etc. require regulating, as they fall outside of street trading legislation, this can lead to miss selling of these services and complaints about hidden charges not apparent at time of contact after details and credit card transaction processed (later than when contact took place).
10. Yes but should be subject to satisfactory CRB check and the provision of a list of related offences c.f Licensing Act 2003. Could mirror the old fit and proper person consideration –Licensing Act 1964
11. Yes
12. Yes subject to satisfactory remuneration to LAs for carrying out this work-involving proper checking of applicants in line with those requirements outlined above. The process should mirror that for LA03 personal licences with applicant providing up-to-date CRB. LAS already regulate other activities held on the street
13. Yes it would mirror principles already operated for taxis drivers and personal licences and other registrations operated by Las.
14. Yes to revocation -all recognised street activities should fall within one trading regime.
15. Yes but with current economic restraints , the fees for such activities must match the costs of the LAs not just to issue but also to enforce.

16. Yes when operated as street trading via LAs
17. Local restriction should apply to pedlars if they continue such as those set out in the Canterbury and Nottingham Bills currently before Parliament.
18. D
19. Already set out in Canterbury and Nottingham Bills –LAs should have powers to regulate their streets, with a broad range of regulatory powers including FPN and seizure-maintained as proportionate and reasonable response on a case-by-case basis.
20. Canterbury has prosecuted over 20 individuals for trading in the City on Licensed Streets whilst allegedly operating under a pedlars certificate. The courts have upheld the fact that these people whilst seeking the protection of the exemption set out in the LG(MP) Act were not pedalling in compliance with the requirements of the Pedlars Act.
21. Yes
22. Penalties should be high enough to act as a deterrent and viable for LAs to pursue if need be via small claims court
23. Fair trading and equal opportunity is vital to a vibrant, successful and lively street scene , however in general the pedlars that have caused problems in Canterbury trade unfairly , have no liability for products , or sell products that cause offence –stink bombs for example, i.e. matters of quality and redress . Licensed traders and retailers have by consent generally agreed to refrain from selling such products. The simplest way is to deal with this issue is to follow proposals in the Canterbury and Nottingham bills.
24. Yes
25. If still in existence then a limit on numbers is essential. The LA should be permitted to control what goes on on its streets. In some places/areas this could be zero. Day licences could be a solution at fair and reasonable cost. Control is important as issues can arise relating to overcrowding (Festival/Christmas/Easter) and potential conflict.
26. Yes but needs to add carnivals.
27. Needs areas clearly defined as with Alcohol Control Areas and published on website etc. Further discussion and development needed here.
28. Suggest B, in that the decision making process should be proportionate and transparent.
29. The suggested proposals could limit the protection of the public in relation to public liability and faulty goods. LAs should have local control of their streets. Gangs of alleged pedlars do turn up from time to time flood an area with shoddy goods and then disappear> enforcement action is difficult as there are no powers for LA officers to enforce requirement to obtain name and address of persons concerned –only police can do this and it is a low priority for them except when breach of the peace occurs.
30. Is generally satisfactory but... no definition of distance –which has major implications in a small congested city such as Canterbury..... Also size of trolley very problematic –difficult to define –what might fit one street would not fit another.
31. See 30 stricter definitions are important.

32. See 30.
33. ----

CARDIFF CITY COUNCIL

*Customer feedback on the service you have received is welcomed.
Comments can be made by email to epp.feedback@cardiff.gov.uk*

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Caerdydd
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Ffôn: (029) 2087 2000

Date / Dyddiad: 2 January 2010

Deba Hussain or Roger Denison,
Consumer and Competition Policy Directorate,
Department for Business, Innovation & Skills,
Bay 146,
1 Victoria Street,
London. SW1H 0ET

Dear Sir/Madam,

Re: Street Trading and Pedlar Laws.

I refer to your consultation on modernising Street Trading and Pedlar Legislation, and on draft guidance on the current regime.

I attach for your information responses to the questions posed in the consultation document on behalf of Cardiff Council Licensing Authority.

I hope this information is of assistance. Please do not hesitate to contact me if you wish to discuss the matter or require any further details.

Yours faithfully,

Paul Shone
Licensing & Strategic Services.

PLEASE REPLY TO: Licensing and Strategic Services, Cardiff Council, City Hall,
Cathays Park, Cardiff, CF10 3ND Tel (029) 2087 1651 Fax (029) 2087 1816 e-mail
licensing@cardiff.gov.uk

100% recycled paper



Response to Questions Posed by the Consultation Document.

Certification Process

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

Yes.

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

No.

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.

Pedlars in Cardiff use shopping cart type trolleys which are extended up from the trolley to provide an extensive area for the display of flags, scarves, mobile phone covers etc. The trolley causes nuisance and obstruction in densely used retail centres and especially when used by organised teams of pedlars on festive or event days who travel in convoy around the retail centre in Cardiff. If a trolley is permitted it should be used as a means of transportation only, should have no more than two wheels, be no greater than one metre in any dimension.

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

Pedlars should not be able to use a trolley within areas which are designated under street trading legislation.

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.

Providing an updated standardised secure photo identity certificate which provides verifiable details of the individual and their address would assist enforcement officers.

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.

The suggested information would be satisfactory.

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

A national database securely verifying the information provided on the certificate would be a useful tool in assisting enforcement officers given the national nature of pedlar activity.

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.

Information on the identity and address history of the pedlar, certificate history, offence details, details of the certificate issuing authority

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.

Street Trading Legislation covers only trading in goods and provided that pedlars were required to comply with this legislation to avoid nuisance there would be no need to regulate the providers of services.

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?

Yes.

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

Yes.

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.

Yes. Local Authorities have experience of dealing with a wide range of licences including those in respect of street traders. In addition to freeing up police resources it is appropriate that pedlar certification should also be administered by the local authority with the police used as a consultative body in line with the process used with other types of licence.

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?

Yes clarification would provide sufficient safeguards and appeals mechanisms. It should be made clear however that pedlars have no automatic right to cause nuisance in places where their activities are inappropriate.

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

Revoking the Pedlars Act and introducing appropriate legislation by adapting the LG(MP)A would be appropriate. Both street trading and pedlary are complementary activities and both should be regulated to ensure they do not cause nuisance or inconvenience to other users of the street.

The Act does not reflect the modern situation, there would be no need to revoke the Pedlars Act however if the LG(MP)A was amended so as to remove the exemption afforded to the holders of Pedlars Certificates. Provided pedlars did not use those areas of a city designated for the purposes of street trading the nuisance they cause would be substantially reduced.

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

To make the option viable it would be necessary for a local authority to limit the places where pedlars may trade. The current system of organised traders moving about within prime retail centres of city centres using pedlars certificates to evade street trading controls must be curtailed in the interest of preventing nuisance, unfair competition and protecting consumers.

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

Where an authority have chosen not to adopt the Act then street traders and pedlars would be able to carry out their activities at appropriate places within the local authority area.

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

Removing pedlars from regulation would be perfectly appropriate provided that local authorities had the ability to prevent their activities in places where they cause nuisance or inconvenience to other street users.

Enforcement

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

Option D.

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

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

Please give reasons for your answer.

Yes. Enforcement of street trading legislation through the courts is an expensive and slow process. The issue of fixed penalty notices would be a more effective tool. However because of the nature of the activity financial penalties do not provide an effective deterrent and seizure of goods can be a more effective enforcement tool in certain circumstances.

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?

Currently the licensing authority together with the police and highways officers mount special joint operations targeting the activity of pedlars at large sporting events, in the weeks prior to Christmas and regularly throughout the year to deter illegal street trading activity. However the requirements of the courts to produce detailed evidence of individual pedlars trading from a stationary

period for an hour makes gaining sufficient evidence expensive and time consuming for officers. Processing of cases and having officers available to give evidence gives rise to additional expense and wastes resources. A more appropriate system for dealing with illegal street trading by the holders of pedlar certificates is necessary.

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.

During operations targeting nuisance hot dog sellers the authority and its partner agencies has seized trolleys under obstruction legislation and has found this to be an effective tool to deter illegal street trading activity. The increase in level of fines provided by the introduction of the Licensing Act 2003 also deterred illegal street trading activity at night. Increased financial penalties and seizure have been effective tools in tackling this nuisance.

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

Illegal trading activity can be extremely lucrative. 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. The limit should be set at a high level in order to provide an effective deterrent. A level 2 fine of £500 would be an appropriate level for a first time offender.

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

The general perception is correct. In addition local authorities spend a great deal of time and money on maintaining and improving city centre retail areas to present a image of the city that is harmed by the presence of often unkempt trolley wheeling pedlars. Local businesses object to the presence of pedlars on the grounds of the harmful effect on visual amenity.

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.

On a day to day basis we do not see in Cardiff any activity taking place by the holders of pedlars certificates which could be described as legitimate pedlary. Traders in the city centre hold pedlars certificates because of the exemption it affords from street trading controls.

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.

Agreed. In particular 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 can not take place without causing nuisance and obstruction to the masses of shoppers attempting to use the facilities provided.

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?

The list of circumstances in which restrictions may be appropriate is agreed.

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

Automatic restrictions should apply where streets have been designated as prohibited for street trading purposes. This would be clear and unequivocal.

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.

The right of appeal to the Magistrates Court provides effective safeguards which work well in Cardiff.

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.*

None.

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.

Advice on avoiding causing nuisance by not trading in places designated as prohibited for street trading should be given.

The checklist does not reflect the position 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 accepted he has thereby infringed street trading legislation. The courts also appear to accept that trolleys are of a reasonable size provided it is possible for the individual to be able move them.

It is important that the checklist match the legal position if it is to have any relevance.

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.

Pedlars operating in Cardiff city centre are organised and trained in evading the requirements of street trading legislation. The guidance will be of little use to them.

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.

The legislation needs to be amended to include a prohibition on the use by pedlars of city centre streets and the guidance should reflect this.

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.

None.

CHICHESTER DISTRICT COUNCIL

CONSULTATION RESPONSE ON PROPOSED CHANGES TO PEDLARY LEGISLATION

CHICHESTER DISTRICT COUNCIL

Question 1 – Definitely – the legislation is totally unenforceable at present. Indeed the Licensing and Enforcement Committee of this Council have reluctantly accepted that it is a waste of Officer time and public money in trying to enforce the current legislation and have accepted a proposal that other than drawing illegal traders attention to the illegality of their activity, we do nothing more at present.

Question 2 – What is “reasonable distance”. This must be more tightly worded. Add “a Pedlar must approach persons to make a sale rather than them approaching him” also define what an approach is ie is a Pedlar shouting from a static position or whilst moving enough for him to be considered to be approaching people or does he physically have to go towards people.

Question 3 – Yes – to cut out ambiguity. No more than 1m² as a size.

Question 4 – This still involves a lot of Officer time monitoring activity that takes place. A new system needs to be simple and needs to cut out judgement issues such as “reasonable distance” and what is a reasonable sized barrow or trolley.

Question 5 – No – It is not the certificate that is the problem. It doesn’t matter if a Pedlar/Trader has a piece of paper or not, it is the fact that illegal street traders hide behind the Pedlars certificate that is the problem.

Question 6 – If this is to be pursued then it should include some detail of what they are licensed to sell and the issuing authority should only issue a Pedlars Certificate if they are satisfied that the activity is going to be Pedling. This should take account of goods being sold, size of barrow/trolley etc. The actual barrow/trolley should form part of the licence being issued to stop larger barrows/trolleys being used later.

Question 7 – No, because very few traders in reality are genuine Pedlars

Question 8 – Yes

Question 9 – Yes – anything that helps to prevent street traders pretending to be Pedlars is to be welcomed.

Question 10 – Yes

Question 11 – Yes

Question 12 – Yes – if sufficiently resourced because this is where the expertise lies.

Question 13 – Yes – this should mirror the provisions of the Licensing Act 2003 for the issue of personal licences.

Question 14 – Why not make it mandatory for Local Authorities to adopt the provisions of the 1982 Act and designate their streets. This would lead to greater clarity and consistency.

Question 15 – See above answer

Question 16 – Don't know

Question 17 – Success will depend totally on how well defined the detailed the exceptions are. There must be no ambiguity or for excessive monitoring requirements for Local Authorities to ensure compliance.

Question 18 – Option D

Question 19 – Yes – an ability to immediately stop illegal trading is essential.

Question 20 – Yes . This Authority has prosecuted one particular trader repeatedly without deterring him from reappearing to offend again. We even got Police to seize his stall, which we 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. I am obliged to walk past him each day as he smiles at me, 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 the legislation.

Question 21 – No. Could add something about causing an obstruction on the highway to passers by.

Question 22 – They should be at the higher end of the scale that you mention to act as a deterrent.

Question 23 – Yes. I do not however think that many genuine Pedlars exist. At least 90% of the traders in this district, who trade on the streets, are illegal street traders.

Question 24 – Yes

Question 25 – Yes

Question 26 – There needs to be a provision 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.

Question 27 – Who is going to pay for the administration of the issuing of day licenses?

Question 28 – No view as not a London authority

Question 29 – No response

Question 30 – Definately not. Illegal street traders will still be able to masquerade as Pedlars. This is little improvement on the current situation.

Question 31 – No. There has to be a way of stopping illegal street traders. Words like “reasonable distance” don’t help.

Question 32 – It must be more precise on the dimentions of trolleys etc.

Question 33 – None.

Ian Brightmore MCIEH
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CORNWALL COUNCIL

Dear Sir / Madam

Please find attached the consultation response from the Cornwall Council Licensing Service in relation to the above consultation. The response has been prepared by officers and circulated to the Chair & Vice-Chair of our Miscellaneous Licensing Committee together with other appropriate officers.

Angie McGinn

Licensing Team Manager (Central)
Public Health and Protection
Cornwall Council
Tel: 01872 224524
Fax: 01872 242104

amcginn@cornwall.gov.uk

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www.cornwall.gov.uk

10 Annex A - Summary of Questions

Certification Process

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

Question 2: Do you think anything should be taken out or added to the list and why? **Suggest additional wording to stipulate that they must not stay in the same street and should pass through.**

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. **Yes. Clear definition is needed. Too large a "trolley" will cause an obstruction. Need to specify width, breadth & height.**

Question 4: Do you have alternative suggestions? Please provide them. **No.**

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. **Yes. Agree that photo ID would be clearer.**

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. **Would be useful to include who they must by law produce the certificate to if asked. On that point it would be extremely useful if they were required to produce the certificate for inspection when asked by a local authority licensing / licensing enforcement officer.**

Question 7: Do you think that a national database of pedlars' certificates will improve the current system of enforcement and certification? **This would be very helpful.**

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. **Would recommend that the database include the photo of the person issued with the certificate.**

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. **Partly. We do get complaints about people providing services in the street (exempted from street trading law on the whole) more so than door to door service providers under pedlars. Maybe the solution is to bring any services provided in the street into the control of street trading legislation.**

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? **Yes.**

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

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. **Yes as we already regulate street trading and this could be incorporated.**

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? **Yes.**

Question 14: What are your views on the above option, and how this might affect street trading or pedlar activity? **Maybe pedlar certificates could still be required for door to door sales / services but sales / services in the street be controlled under the existing street trading legislation.**

Question 15: With further work, do you think this option is viable? Please give reasons for your answer. **If require pedlar certificate for door to door then it will be for the licensing authority to adopt street trading legislation as considered appropriate.**

Question 16: Are there other ways of maintaining the national access to pedlar certificates other than under the Pedlars Act? **Maybe select a Council in each County to take control of updating County register onto a main website where all County registers can be viewed by selected authorised persons?**

Question 17: What are your views on the above option? Please give reasons for your answer. **If the local authority feel it is appropriate to regulate trading then there should be no exemption for pedlars if the Act is repealed. Exemptions are open to abuse as are the use of Pedlar Certificates. Licensed (or consented) street traders complain that they require licensing whereas the pedlars flout the law and say they are pedlars but act as an illegal street trader.**

Enforcement

Question 18: Which of the above options do you favour? **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. **Yes they should as this would be an instant penalty which could be a better deterrent.**

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? **We successfully prosecuted an illegal trader (with pedlar certificate) and it**

took 12 months for Court to hear. They were found guilty but were only fined approximately £40 – this is not a deterrent.

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. **Yes**

Question 22: At what levels do you think the fixed penalties should be set? Please give reasons for your answer. **Would suggest that they are set in proportion to other fixed penalties which are a similar type or level of offence.**

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

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. **Yes**

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. **Yes**

Question 26: Do you agree that the list above illustrates the circumstances under which restriction on numbers is justifiable? **Yes**
Do you disagree with any of the listed circumstances, if so why? **No**
Would you add any circumstances to the list, if so, which and why? **No**

Question 27: Do you have any observations in relation to the ideas aired in the final paragraph above on methodology and notice? **No**

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. **Believe it should be Magistrates as this is in line with the rest of the Country.**

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.* **Have no evidence to provide.**

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. **Need to add the requirement to produce the certificate.**

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. **Yes**

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. **Include current seizure powers by the Police for persistent offenders so that it is clear what can happen if they do not comply and continue to trade illegally.**

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. **No further comments to add.**

CRAWLEY BOROUGH COUNCIL

BIS Street Trading & Pedlar Laws Consultation Response

Certification Process

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

Yes, the definition provided in the Pedlars Act 1871 undoubtedly leads to confusion regarding lawful activity under a pedlar's certificate.

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

The clause "Must move around to trade – keeping a reasonable distance from their last sales position, moving on until another sale is made" needs rewording to provide clearer definition. Who decides what constitutes a reasonable distance? Experience has repeatedly shown that in practice a pedlar will move the shortest distance possible. I suggest the term "move from street to street" would provide clearer definition of the requirement for pedlars not to undertake more or less static trading.

The clause "Should avoid standing still between sales when trading" should be changed to "**Must** not stand still between sales when trading" for similar reasons to the above.

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.

It is essential to define the permitted maximum size of a trolley. The use of ambiguous terms such as "small" in relation to trolley size would lead to further confusion regarding what is acceptable. Two incidents have occurred in the Town Centre where pedestrians have been injured by pedlar's trolleys which the pedlar was unable to control properly due to its unmanageable size.

To ensure that the trolley is easily manoeuvrable and that the pedlar can see down the sides and over the top of the trolley, it should be a maximum size of 1.5m long by 0.75m wide by 1.5m high with all stock displayed within the confines of the trolley; i.e. not hung on the outside of the trolley or stacked higher than the permitted height.

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

Yes, it may be worth considering a requirement for pedlars to have public liability insurance.

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.

Yes, a standard certificate will definitely assist enforcement officers in identifying lawful pedlars. Past experience has shown that the current situation where pedlar certificates come in a variety of different forms has caused un-necessary confusion. Identification of the pedlar where the certificate does not include a photograph or a

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.

If pedlars were required to have public liability insurance it would be a good idea to include the policy number on the certificate.

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

Yes, I believe it is fundamental to the proposed changes.

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.

I would add the public liability insurance policy number if it is decided that pedlars are required to have such insurance.

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.

I believe a clear definition of 'services' is required in any case. We have seen an increase in the number of people claiming to be selling a service; in particular those selling paintball days.

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?

Yes.

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

Yes, the introduction of defined criteria relating to 'fit and proper' should certainly lead to a more consistent approach.

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.

Yes responsibility for issuing pedlar's certificates should be transferred to local authorities as they are already responsible for issuing other street trading licences and consents.

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?

Yes, subject to the comments made above.

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

I believe it would be beneficial to have all regulation of street trading covered by the same regime. This would provide clarity for enforcement officers, pedlars and other street traders. However, I believe it is necessary and desirable to have a national register of pedlar's certificates/licences if they are to continue to have effect throughout the UK.

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

I believe revoking the Pedlars Act and licensing pedlars under the LG(MP)A 1982 to be a viable option providing that all local authorities are required to participate in the certification of pedlars regardless of whether they have adopted other powers under this Act. However, I think amendments should include powers for local authorities to regulate the number of pedlars where it is justifiable and proportionate to do so. For example in specific locations and/or at certain times of the year.

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

Not without introducing new legislation.

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

I am not in favour of this option. I have concerns that local authority enforcement officers would have little power to deal with those trading under the exemption. For example, what powers would officers have regarding requesting name and addresses of those trading in this way if they are not required to have a certificate or licence?

Enforcement

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

Option D

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

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

Yes

Please give reasons for your answer.

Evidence indicates that the cost of prosecuting offenders for illegal street trading outweighs the cost to the defendants, largely due to the small fines imposed by 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 more effective deterrent.

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?

Our enforcement officers currently record the details of all pedlars spoken to and offer guidance on compliance with the requirements 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.

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.

Yes it seems comprehensive to me.

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

For FPNs to have a significant, deterrent effect I believe they should be set towards the higher end of the range indicated, depending on the nature of the offence.

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

Yes.

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.

Yes, providing the concerns expressed above are addressed; in particular those concerning virtually static trading and the size of trolley.

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.

Yes, undoubtedly so.

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?

I agree with the list but would add: In streets that are mass evacuation routes or emergency services vehicle routes where excessive numbers of pedlars could cause a hazardous obstruction.

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

I would 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.

I would insert a clause limiting the number of times a 'day permit' would be issued to any pedlar to provide equal opportunity for all pedlars.

Should the allocation of 'day permits' not be taken up in advance I would allocate any 'spares' on a first come first served basis and remove the limitation on those pedlars who had had been allocated the maximum number of 'day permits'.

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.

It would seem to make sense to me that all appeals are determined by the Magistrates' Court to avoid confusion.

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.

I think it is imperative that a clear definition of services is needed. I believe 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.

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.

Yes, if the changes recommended above are included.

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.

Yes, if the changes recommended above are included.

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.

Please see above.

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.

Dave Packham
Licensing Officer
Regulatory Services
Crawley Borough Council
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DARTFORD BOROUGH COUNCIL

RESPONSE TO CONSULTATION ON

PEDLARS CERTIFICATES ETC.

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

We agree that the definition of a 'Pedlar' needs to be updated and clarified.

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

We believe that the list should make reference to Section 24 of the Pedlars Act: "Nothing in this Act shall take away or diminish any of the powers vested in any local authority by any general or local Act in force in the district of such a local authority." Thereby requiring that Pedlars do not trade on "prohibited" or "Consent" Streets.

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.

We think that there should be a maximum size permitted under legislation as otherwise it will be left to the interpretation of individual Enforcement Officers which does not assist in providing a consistent approach with inevitable confusion for Pedlars.

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

The use of 'Sack Barrows' would seem appropriate.

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.

We believe that updating the certificate to a prescribed format is essential for the verification and identification of lawful pedlars as the details proposed will assist all parties in the enforcement process.

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.

We think the application form for the certificate should include the applicant's date of birth and require proof of current address, i.e. utility bill; this will ensure that if enforcement action is necessary then there is a good likelihood that it is successful.

Question 7:

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

Yes, we believe that a national database would be of real benefit to all parties.

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.

We agree with the proposed content of the national database.

Question 9:

With reference to section 6 of this document 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

We do not believe that the reintroduction of certification is necessary as the number of present day Pedlars only providing a service is minimal; any Pedlar providing service is most likely also to be involved in the selling of goods and would therefore already require 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 certificate?

We think that a similar approach as that taken under the Licensing Act 2003 with regard to the application for a Personal Licence whereby there is a prescribed list of relevant offences provided within the legislation which prohibit the applicant from being granted a licence or certificate.

Question 11:

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

By adopting the approach suggested in the answer to Question 10 there would be complete consistency across issuing authorities as they would all be working from the same criteria.

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.

We believe that local authorities are best placed to issue certificates as they already have similar procedures and processes in place.

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?

Again providing there are consistent and legislative grounds for refusing an application, then certification should be fair and non-discriminatory.

Question 14:

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

As a Local Authority we do not foresee any problems with the certification of pedlars.

Question 15:

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

Whatever legislation is eventually decided on with regard to the issue of pedlars certificates it would not really affect our processes and procedures.

Question 16:

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

Maintaining national access to pedlar certificates is simply a matter for government to decide on the most suitable legislation.

Question 17:

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

This could lead to inconsistency across local authorities and create additional work for the authorities.

Question 18:

Which of the above options do you favour?

We favour the governments preferred '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?**

Local Authority Enforcement Officers should be given powers to issue FPN's and also seize goods as this will provide us with a cost effective and meaningful method of dealing with any problems.

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?

We are currently reluctant to pursue a prosecution due to the financial implications of taking a perpetrator to court; FPN's provide an instant penalty and an efficient use of our resources.

Question 21:

Is the list of offences in respect of FPN's complete and correct? If not, please state which offences you would add or take away, and why.

The list is fine although consideration could be given to the inclusion of minor offences with regard to size of any trolley utilised and remaining stationary between sales etc.

Question 22:

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

The penalty levels could be set at different amounts depending on the severity of the offence; the proposed levels within the consultation document seem to be about right.

Question 23:

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

We do agree with department's general perception as set out; certified pedlars trading legitimately do not normally cause problems, it is certified pedlars who misuse their certificates that give cause for concern.

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.

Yes, we are in general agreement with this statement.

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.

Yes, we also agree that numbers of pedlars in specified areas is necessary; we already limit the number of Street Collections permitted within the town centre on any given day for similar reasons. We also have streets that are designated as “prohibited” for street trading Under LG (MP) 1982 and wish to be able to prevent all street trading on these streets.

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?

The list seems comprehensive; there are no additional circumstances that come to mind.

Question 27:

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

Our observation is that there would appear to be a requirement for a pedlar proposing to visit a particular area to contact the local authority at some point in advance in order to determine any possible restrictions etc. This could then involve the local authority issuing a permit along similar lines to a Street Collection Permit.

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.

It seems reasonable for the appeals to be to a magistrate as this seems proportionate and in keeping with areas outside London.

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.*

We agree with the stated position with regard to the Services Directive and do not believe that there are a substantial number of pedlars offering services only; most pedlars also sell goods or only sell goods and would still require certification.

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.

We believe that the checklist at the front of the guidance is an adequate one-page summary.

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.

We found the draft guidance to be a comprehensive and easily understood document which meets the needs of all relevant parties.

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.

We believe the draft guidance is satisfactory.

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.

We have no further comments or observations; it is too early to determine possible costs or resource requirements should certification pass to Local Authorities.

David Court MIOL ABII
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Community Safety Unit
Dartford Borough Council
Direct Dial: 01322 343339

DONCASTER METROPOLITAN BOROUGH

Dear Sir/Madam

Please find attached a copy of Doncaster Metropolitan Borough Council's response to the consultation on street trading and pedlary.

I would be grateful if you could confirm receipt of this email

Thanks

<<Street Trading and Pedlary Consultation Response.doc>>

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Street Trading and Pedlary Consultation Response

Doncaster Metropolitan Borough Council

Question 1

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

Yes

Question 2

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

The final point of 'May use a small means of transporting goods e.g. trolley to carry stock' should be further emphasised to state that the method of transport used should not be used to display goods for sale.

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.

It would be very difficult to specify a prescribed size for a trolley, however given that the trolley will be, on the whole, moved around on the pavement, the trolley should be of an appropriate size to be moved as part of normal pedestrian traffic. Perhaps the size should be comparable with the wheelbase of a wheelchair or pushchair.

Question 4

Do you have alternative suggestions? Please provide them.

There should perhaps be some power whereby an authorised officer of the Highway Authority can order the removal of a trolley from the highway if he/she believes it represents a nuisance or danger to any user of the highway (this could be possible under section 149 of the Highways Act 1980 however this section only refers to anything deposited on the highway). This could be on the grounds that the trolley is too big for the particular area or it is of poor construction and could be seen to be dangerous.

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.

Yes. This will give enforcement officers a number of points of reference to check against if they believe the certificate is fraudulent. It will also allow more readily available information for customers of any pedlar should they wish to keep a record of any transactions.

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.

Yes.

Question 7

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

Yes.

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.

Yes.

Question 9

With reference to section 6 of this document 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.

Yes. Where there are problems with rogue traders mis-selling of services, a pedlars certificate and the information that it holds would be a useful point of reference that could be used by residents or businesses that are visited by pedlar service providers. This will give extra kudos to bona fide pedlars and will also give customers a source of information that could be used as part of any future investigation should there be any reason for the Local Authority or Police to become involved as a result of mis-selling or bogus calling.

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?

Yes.

Question 11

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

Yes. Hopefully. This will also aid Magistrates' should a refusal be appealed.

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.

Yes. Local authorities are better placed to carry out licensing functions as they already have this responsibility for a vast amount of other licences/certificates. During the process of determining whether an applicant is suitable, the local authority could consult the police for the purpose of identifying any known criminal record that the applicant may have.

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 regime? If not, what alternative or additional safeguards do you think are required?

Yes. The process should be transparent, but should also be consistently applied by all local authorities.

Question 14

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

It would make sense to regulate all forms of street trading in the same manner. It would be beneficial to be able to prescribe streets that are consent, prohibited or licence streets for pedlary as well as street trading. This would give local authorities some control and would also provide a useful tool for CDRPs to tackle cold-calling and rogue trading in problem areas.

Question 15

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

Yes. Local authorities would have the capability to exercise full control over street trading/pedlary in their borough.

Question 16

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

Provision of a national database would give local authorities access to all certificates and expiry details. This could be hosted and/or managed by the Department for Business, Innovation and Skills. An amendment to the LG(MP)A could make a duty for all local authorities to make records available on the website – a precedent for this already exists through the Flycapture database managed by DEFRA. The Anti Social Behaviour Act 2003, places a duty on all local authorities to provide monthly returns to this database. In a similar vein, Trading Standards services also provide routine returns to the Office of Fair Trading.

Question 17

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

We are not supportive of this option. Whilst it is recognised that the removal of the requirement for a pedlar to have a certificate would allow pedlars to trade more freely, there would be no audit trail or certification to support the fact that any pedlar has been deemed to be 'of good character'.

Question 18

Which of the above options do you favour?

Option D

Question 19

Should Local Authority Enforcement Officers be given powers to:

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

Please give reasons for your answer.

We would be supportive of both powers. A fixed penalty notice would be a more proportionate sanction to use for first offences or more minor offences and would allow local authorities to deal with matters outside of the Court whilst also providing a reasonably substantial deterrent to offenders. A power of seizure could be employed for more serious offences or when dealing with a prolific offender.

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?

Provision of new powers to issue FPN and seize goods 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. In these cases, there is often a lack of willingness to spend time preparing a prosecution case file knowing that there will be a nominal penalty handed down in the Court. However, as has been the case with a large number of other offences where FPNs have been introduced, the FPN fine amount could almost act as a minimum benchmark of the type of penalty that could be expected in Court. Having these additional powers, and making them known to illegal, and legal, street traders will soon increase compliance across the board.

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.

Yes. Where an offence is committed that relates to the misuse of a certificate by a person or breaching one or more of the conditions of the certificate, it is felt that the guidance should highlight these as issues that could result in revoking a certificate.

Question 22

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

A default amount of £100 would be suitable, and would act as a strong deterrent. This amount would be difficult to factor in as an overhead by the vast majority of street traders/pedlars. Where there are illegal traders that are not deterred by the fixed penalty notice, the Local Authority Enforcement Officer would have the choice to seize goods and/or prepare a prosecution case file.

Question 23

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

Yes.

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.

Yes

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.

In principle, yes this would be justifiable – for example in cases where the local authority or police believe that the presence of a pedlar is causing or is likely to cause a nuisance or danger to members of the public due to congestion.

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?

Yes. One further restriction that could be applied would be 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.

Question 27

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

The guidance document would need to outline what is seen to be ‘reasonable notice’. In cases 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. Where restrictions are more permanent, it could be reasonable to expect a local authority to publish a public notice in the same way as is required by the LG(MP)A.

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.

No comment

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.

It is essential 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 pedlars 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.

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.

In paragraph 2 (You must move around to trade....) it would be beneficial to add the term ‘moving from street to street on a regular basis’.

As mentioned previously, the definition on the size of a trolley is very ambiguous and needs further clarity.

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.

Yes, on the whole.

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.

There should be a clear definition regarding the trolley. Given that the guidance says that the trolley may only be used for storage of goods, it could be further substantiated by saying that the trolley may not be used as a means of exposing goods for sale.

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.

Nothing further to add.

ENFIELD COUNCIL

Dear Deba Hussain/Roger Dennison

Please find attached, the London Borough of Enfield's response to this consultation.

Many thanks

Sue

Sue McDaid
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Date: 4 February 2010

Dear Sir/Madam

Response to the consultation on modernising street trading and pedlar legislation and on draft guidance on the current regime

The London Borough of Enfield welcomes the opportunity to respond to this initial consultation document. It is noted that there will be a second consultation following the outcome of this consultation.

Please find our response below to the specific questions asked in the consultation:-

The Pedlars Acts 1871 and 1881 and the definition of 'pedlar'

Question1:

We agree that the definition of 'pedlar' needs updating as the terms in the legislation are out of date and not reflective of modern terminology and trading at this time.

Question 2:

We recommend that the new proposed definition be amended to include reference that the trade of a pedlar involves the 'sale of goods', being 'itinerant' and explicitly state that trading must not be undertaken from a fixed/static position. We note that the provision of 'services' has been excluded as it was deemed to be an un-justifiable barrier to trade under the EU services Directive, but do not fully understand why .

Question 3:

The permitted size of trolleys to transport goods could be set out in the guidance rather than specified in legislation. Prescribing the size of a trolley could be unnecessarily restrictive and not allow for some degree of judgement about what is reasonable.

Question 4:

We have no alternative suggestions about the definition except the comments provided to enhance the definition as in the response to question 1.

The Pedlar's Certificate:

Question 5:

We agree that updating the Pedlar's certificate to include a photograph, NI number, address, Issuing authority name and contact details, expiry date and unique reference number would assist enforcement officers in the verification and identification of lawful pedlars. The form of certificate on the 1871 Act does not include essential information that is normally conveyed in licences/registrations such as the applicants address, and does not include means to accurately confirm an individual's identity (eg National Insurance number, photo).

Question 6:

It seems that the modified pedlars certificate should be similar to personal licences issued under the Licensing Act 2003. They are in a durable format of prescribed dimensions (credit card sized photo card identification), and include a watermarked identification to avoid forgeries. These are issued by local authorities to persons residing in their area who wish to sell alcohol regardless of where they trade. You may be aware that there is no national database for personal licence holders and this is not ideal. However, personal licences do contain the licence holder's name and address, , and it is not explained why the name at the very least is not included in the proposed pedlars' s certificate. We assume that it may be because they may be expected to show their ID to members of the public when they trade door to door and use of a NI number or unique reference number will be the means to identifying the individual to the issuing authority in case of enquiries/complaints, but preserving their personal details. However, the ready identification of the individual for enforcement

officers (and the pedlar) is vital so the database needs to be easily available. If a database is not provided, the certificate holder's name and address should also be provided on the certificate.

We presume that the applicant's date of birth would be supplied on the application form and held by the issuing authority, and maybe also on a national database.

National Database of Pedlars

Question 7:

A readily accessible national database of pedlars would help verify and confirm the identity of lawful pedlars. It is essential (most efficient and effective) for the enforcement officer and the pedlar that it is capable of being done at the time as the pedlar would be anxious not to be 'detained' whilst enquires are made and in the case of unlawful pedlars if this was not established at the time it may not be possible to trace the individual thereafter.

Question 8:

We suggest that the date of birth should also be held on the national database as a means to identifying individuals. Their contact details (eg telephone numbers and email addresses if applicable) should also be held on the database or by the issuing authority.

One of the considerations for a national database will be how the data is loaded (ie will it be entered directly onto the database by the issuing authority, or the required data entered/uploaded after issue of the certificate. It will be important that there is not double entry of data by the issuing authority (ie once onto their own database and then again onto a national database). There are current examples of where data is entered and kept on the local authority's database and then automatically uploaded at a determined frequency onto a central/national database or vice versa (eg food hygiene scorings in the London 'scores on the doors' scheme and the national food sampling database – FSSNet.)

Question 9:

We would support the re-introduction of 'services' into the legislation. We understand that the EU Service Directive covers the provision of 'services' by traders such as by craftsmen and building construction for example. However, the Pedlars Act has been amended to take this 'authorisation scheme' outside the scope of the EU Services Directive. It appears that the rationale behind this is that the certification of pedlars providing a service could not be justified as it presented an unreasonable barrier to trade, but there is no information about why it was deemed discriminatory, unnecessary (not justified by some genuine underlying policy objective) and disproportionate. Presumably, if there is an underlying public policy reason why the pedlars of goods should be retained in a certification scheme then this should also apply to the pedlar of services.

Grant of a certificate

Question 10:

We agree that the new definition of ‘by reason of misconduct or other sufficient reason’ is a better definition and reason for refusal of a pedlars certificate application rather than ‘not being of good character’. It is a wider and more flexible definition as it captures previous convictions and should also permit refusal if there was a serious complaint or intelligence that although did not result in conviction (for whatever reason) but was of sufficient concern to fall under the ‘other sufficient reason’ part of the definition.

Question 11:

We are unable to answer this as we do not currently issue pedlars certificates, but guidance to issuing authorities will assist a more consistent decision making process in the interpretation of the legislation.

It is important that there is a mechanism for the capture of all relevant convictions that can be checked when a pedlar certificate application is made. For example, there are duties placed on magistrates courts and licence holders in the Licensing Act 2003 to report relevant offences by licence holders. As well as offences committed under the Pedlars Act there may also be other relevant offences prosecuted by the Police or other enforcement bodies (eg Trading Standards) for counterfeiting, fraud, offences against consumer (Consumer Protection from Unfair Trading Regulations 2008).

Issuing authority for a pedlar’s certificate:

Question 12:

We strongly believe that there is great benefit in transferring the responsibility for issuing of pedlars certificates from the Police to local authorities for the following reasons:-

Local authorities have well established experience of dealing with a range of licensing. This includes street trading and personal licences under the Licensing Act 2003

There are existing well established and effective consultation and enforcement mechanisms with the Police, highways, trading standards and others (eg we have a joint licensing unit with the Police so there is effective consultation with the Police for, as an example, PNC checks for personal licences)

Pedlars certification would compliment other local authority licensing and regimes for regulation of the street scene and fair trading (eg street trading, car boot sales, prevention of rogue trading (eg No cold calling zones) and give greater ability to control illegal and detrimental trading but also to promote the vitality of the local economy with the good regulation of pedlars

Whilst issuing certificates to pedlars we would give them information about any restrictions (eg designated streets for street trading and no cold calling zones but would also be able to provide/signpost them to any business support they might need)

Question 13:

The refusal and appeals provisions are similar to most other legislation which are fair and non discriminatory. Additional safeguards could include timescales for determination and issue of the certificate and prescribed statutory consultees.

Question 14:

It seems sensible to revoke the Pedlars Act, and to incorporate Pedlars Act certification into the street trading legislation. There are examples of legislation where it contains statutory provisions such as a duty to issue Pedlars certificates along with discretionary provisions such as to adopt street trading provisions with in the same legislation. We do not foresee any detrimental effect on street trading or pedlar activity in this proposal.

Question 15:

We believe the above option (incorporation of pedlar certification into street trading legislation) is viable for the reasons expressed above.

Question 16:

No further suggestions.

Proposal to revoke the Pedlars Act and to exclude pedlar activity from street trading regulation except in specific, defined circumstances

Question 17:

Whilst it would seem less bureaucratic, less costly and provide more freedom for pedlars to trade under this proposal, it would only regulate pedlars in those streets that had been designated and in those local authorities that have adopted street trading provisions. Certification of pedlars does afford some degree of consumer protection and regulation of fair trading, which presumably is the reason why the legislation was first implemented.

Enforcement options for street trading and pedlary offences

Question 18:

We favour an amended version of Option D in terms of enforcement for street trading and pedlary offences; we would want to keep the ability to prosecute. Option D affords local authorities the additional powers of seizure and forfeiture of illegally traded goods and the issue of fixed penalty notices for offences – a regulatory regime

that local authorities are very familiar with. However we would still wish to retain the power to prosecute for the most serious and persistent offences.

Question 19:

We would welcome the powers for local authorities to be able to issue fixed penalty notices and seize goods with forfeiture by order of the court. These are enforcement powers that local authorities officers are familiar with and trained and competent to exercise, and are a 'more immediate' and effective means of dealing with such regulatory offences.

Although the burden to recover the fine in the FPN is on the local authority, in the first instance it should reduce the burden of prosecution on the courts and should be less costly than prosecutions for local authorities. However, if the FPN is not paid local authorities will then need to take proceedings to the court to recover the fine. However, our experience of other FPN regimes have demonstrated that 60-90% of FPNs are paid without the need to go to court proceedings.

Question 20:

We favour the introduction of these new powers for the reasons explained above. We recently introduced increased enforcement of litter provisions by the issue of FPNs for littering offences. This initiative has resulted in 3484 FPN 's served for littering and a payment rate of approximately 60% is being achieved. The Courts are sympathetic to this approach, agreeing to set one day/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. Resident satisfaction with littering and street scene is improving to 62% in 2009. It has been more cost effective than prosecuting for all the offences.

Question 21:

We suggest that an additional offence be added into the list of pedlar offences of falsifying information or a certificate; although this may be more appropriately dealt with by prosecution rather than FPN. We would also want to retain the ability to prosecute for unlicensed street trading and un-certificated pedlar activity and for contravention of conditions.

Question 22:

The proposed fines of between £100-£300 dependant on the offence appears appropriate.

Power to impose local restrictions on certified pedlar activities

Question 23:

We agree with BIS's general perception as set out in section 5.2. We agree that there is a need for fair competition between traders, and that appropriately and properly licensed street trading and pedal activity is a means to achieve this. Pedlars should be

regulated in the interests of traders who are street licensed and in the interests of fixed businesses, but also that the legitimate trading of pedlars also needs to be protected. Good regulation requires a balance between the needs of pedlars, street traders and fixed businesses, but also allows greater consumer choice. The regulations need to be clear and proportionate to enable fair trading and competition.

Restrictions on Pedlar activities

Question 24:

We agree that the provision of more enforcement options against illegal street trading and sufficient demarcation between legitimate pedlary activity and other street trading would address concerns about unfair trading and completion.

Question 25:

We agree that, in certain circumstances, the restriction on the number of legitimate pedlars in specified areas at specified times can be justifiable and it will be for the local authority to determine and justify these reasons.

Question 26:

The examples given in the guidance of circumstances where restrictions on pedlar activity would be justified appear justifiable and reasonable. However, it is not always possible to foresee all circumstances and the list in the guidance should not be exhaustive so allowing local authorities ability to determine other similar circumstances which they would clearly need to justify.

Question 27:

Whilst we can see why pedlars might only decide to apply for a licence on the day during periods of numbers restriction, this does pose an unreasonable licensing burden on the local authority. We agree that any restrictions for pedlars are made well known in advance.

Final point of appeal for street trading appeals

Question 28:

We agree that street trading appeals should be determined in the magistrates court rather than by the Secretary of State. This is consistent with other well established and effective licensing appeal regimes, and is proportionate.

EU Services Directive:

We do not really understand why the pedlar of services have been removed from the scope but the pedlar of goods have been retained. Whilst we accept that the number of pedlars that purely offer services is relatively low – it may be the case that this does not fully represent the actual number of pedlars that trade (ie there may be many that trade unlicensed without detection). One of the greatest priorities for trading

standards services is the protection of consumers from rogue traders/doorstep sellers. Many of these rogue traders are offering services (eg driveways, roofing, gardening work), and may possibly be captured by the Pedlar Act, but will never have applied for a certificate. Whilst we appreciate that there are other enforcement means to deal with such illegal activity, if consumers knew that they should ask for and check for a pedlars certificate this could alert them to possible rogue activity.

Draft guidance

Questions 30-32:

The draft guidance appears to meet the needs of enforcers and traders.

Question 33:

We have no further comments/observations on the consultation except that the current pedlar certificate fee of £12.50 is too low and would not cover the reasonable costs of processing the application.

Yours sincerely

Sue McDaid
Head of Business Regulation

GLASGOW CITY COUNCIL

Dear Sirs,

Please find attached Glasgow City Council's response to the above consultation.

If I can be of any assistance with regard to the response, please do not hesitate to contact me.

Kind regards

Mairi McCallum
Solicitor
Licensing Section
Glasgow City Council
235 George Street
Glasgow

tel: 0141 287 0412

A JOINT CONSULTATION ON MODERNISING STREET TRADING AND PEDLAR LEGISLATION, AND ON DRAFT GUIDANCE ON THE CURRENT REGIME RESPONSE ON BEHALF OF GLASGOW CITY COUNCIL

Glasgow City Council welcomes the opportunity to respond to the consultation.

Certification process

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

The definition of a "pedlar" should be updated. Due to the regulation of street trading in Scotland it is no longer clear where pedlary ends and street trading begins. In our view pedlary should be limited to "door-to-door" sales. Accordingly we recommend that the definition should be amended to define a pedlar as being *"any person who travels and trades on foot from premises to premises, carrying to sell or expose for sale any goods, wares or merchandise, or procuring orders for goods, wares or merchandise immediately to be delivered"*. All other activity would fall within the definition of a street trader, as defined by section 39 of the Civic Government (Scotland) Act 1982.

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

The distinction between pedlars and street traders is not clear from the list given. It is our view that pedlars should be limited to persons trading "door-to-door". We recommend deleting the criteria for a pedlar to avoid standing still between sales when trading and only pausing to make a sale should be deleted as these are akin more to street trading.

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.

The size of a trolley used by a pedlar should be defined in order that trolleys used are reasonable and fit for purpose. As in our view a pedlar should trade only on a “door-to-door” basis, the size should not be excessive and the trolley should not be capable of mechanical propulsion (i.e. it should be pushed by the pedlar).

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

It is our preference that pedlar activity should be restricted to trade by an individual such as a door-to-door salesman. At present the definition of a pedlar is open to abuse due to uncertainty as the difference between pedlary and street trading.

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.

Yes. A standard certificate will be recognisable and familiar to all and so it would be easier to enforce. It is desirable that the pedlar's name, photograph and pedlar number should be on an identification badge worn while working.

However it is our view that a pedlar's national insurance number should not be detailed as part of the certificate. Such data is sensitive personal data in terms of the Data Protection Act 1998 and so must be held securely by the issuing authority. This would place onerous burdens of compliance on issuing authorities which would have high cost implications and would be disproportionate to the aim of the certification regime.

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.

It is our view that the national insurance number should be deleted for the reasons given above in our answer to Question 5.

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

Yes. A national database would streamline and improve the enforcement and certification of pedlars.

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.

Yes. The information contained in the database should reflect the data contained in a pedlars' certificate.

As outlined in our answer to Question 5 above, a pedlar's national insurance number may be included but not detailed on the certificate. However its inclusion in the database would have onerous burdens of compliance in terms of data

protection on issuing authorities. Such compliance would have high cost implications and would be disproportionate to the aim of the certification regime.

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.

We agree with the findings of the Durham Report that there are few pedlars who offer only services and so we do not support a reintroduction of certificate for pedlar service providers. However this should be kept under review in order that if this position changes, consideration may be given to bringing such pedlars within the certification regime.

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?

Yes. However it is our view that the period of residence before a pedlars' certificate may be applied for is too short. For example applicants may only have lived in the UK for a short time before submitting their application. Where applications are submitted by individuals who have recently arrived in the UK, it is our view that the issuing authority should have the power to require them to provide a Criminal Record Check from their previous country of residence prior to determination of their application and that if a Criminal Record Check is not provided, the issuing authority may choose to refuse the application. The period of residence in the UK prior to application should be a minimum of one year.

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

Consistency in decision making is welcomed due to the national validity of a pedlars' certificate. However it is our concern that an issuing authority in one part of the UK may refuse to grant an application but another may, thus meaning that an applicant who was not considered to be suitable to hold a pedlars' certificate by one authority may trade in their area. This is an example of the inherent inconsistency within the present pedlar legislation.

This inconsistency would be further compounded if responsibility for issuing pedlar certificates was to be transferred to local authorities. At present there are 32 unitary authorities in Scotland. If responsibility was transferred it is possible that one local authority may refuse an application but a neighbouring authority may grant an application from the same individual, allowing them to trade in the area of the refusing local authority.

It is our view that in order to achieve a consistent approach to the granting and refusal of applications for pedlars' certificates, there should be a single UK body with responsibility for determining all applications. Consideration should be given to establishing a national body similar to the SIA.

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

No. As outlined above, if responsibility for issuing pedlars' certificates were to be transferred to local authorities, due to their UK-wide validity, it is likely that there would not be a consistent approach taken in determining applications.

Further if responsibility were to be transferred to local authorities, this would reduce local authorities' ability to regulate and manage trading activity in their area.

In order to achieve consistency in determination of applications, it is our view that responsibility for issuing pedlar certificates should be transferred from the police to a UK-wide body similar to the SIA.

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?

Yes. However if applications are determined by many separate authorities (e.g. local authorities) this could lead to inconsistency in decision making as each authority will have a different view with regard to the desirability of pedlary in their area. However refusal of an application would not prevent pedlary activity from taking place in their area. Applications should therefore be determined by a single national body.

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

It is our view that the Pedlars Act 1871 should not be revoked. By amending the definition of a pedlar to restrict pedlar activity to door-to-door sales only, all other activity which at present would be defined as pedlary would fall within the scope of street trading and so would be regulated by local authorities.

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

Yes. By amending the definition of a pedlar as described above, this will simplify the regime and allow for easier enforcement, thus reducing costs to local authorities and the Police.

15. Are there other ways of maintaining the national access to pedlar certificates other than under the Pedlars Act?

As an alternative to revoking or amending the Pedlars Act 1871, new legislation in this area could be introduced. It could create a new UK-wide body to determine all pedlar applications and expressly state that pedlar certificates should have UK-wide validity. This would be the simplest and most cost effective method?

16. What are your views on the above option? Please give reasons for your answer.

While it is welcomed that the definition of a "pedlar" and the regulation of pedlars should be updated, it is of concern to the Council that if regulation of pedlars was to be abolished and the Pedlars Act be revoked, individuals may be able to legitimately trade who at present would be refused a pedlars' certificate or street trader licence due to convictions (e.g. for crimes of dishonesty).

It is our view that the Pedlars Act 1871 should be amended to update the definition of a pedlar to restrict pedlar activity to door-to-door sales or to replace it with new legislation.

Enforcement

17. Which of the above options do you favour?

The Council favours Option D. This would allow enforcing officers, whether from the Police or a local authority, to put an immediate stop to unlawful trading. The powers available under Option D should be extended to Scotland. However enforcing authorities should retain the right to refer offenders to the Procurator Fiscal in cases where there has been repeated offending despite the issuing of fixed penalty notices and/or the seizure of goods.

18. Should local authority enforcement officers be given powers to:

- a) Issue fixed penalty notices
- b) Seize goods, with forfeiture by order of the Court?

Please give reasons for your answer.

Yes. This will allow more efficient and effective enforcement. At present offences in Scotland must be reported to the Procurator Fiscal. Delay in prosecuting the offence, whether by means of a Fiscal Fine or before the Court, is not an effective deterrent: offenders may continue to trade. However if enforcement officers were given the power to seize goods sold, this would not only provide evidence for any subsequent prosecution but would also have the effect of ending the illegal trading “there and then”.

19. 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?

Fixed penalty notices have been found to be a very effective way of dealing with smoking-related and littering offences. They provide an immediate “punishment” for an offence and are more efficient than producing a full report to the Procurator Fiscal for prosecution. An immediate sanction for illegal trading may deter individuals from trading.

20. 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.

Pedlars Act offences – it should also be an offence to use a false certificate. It has been suggested that some illegal pedlars have used “counterfeit certificates” in order to evade enforcement.

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

The Council suggests that fixed penalty notices should be set at approximately £300. This would act as a reasonable penalty and also ensure that traders do not disregard the penalty as an expense.

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

No. It is of concern that individuals claim to be pedlars or hold pedlars' certificates in order to trade to the detriment of retailers and legitimate street traders. It is the Council's view that it must be able to properly regulate trading within its area. However at present the Council is unable to effectively enforce its policies with regard to trading in particular areas, e.g. the city centre, due to the complexity and overlapping nature of pedlar and street trading regulation.

23. 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.

Yes. However there must be clear demarcation between the definition of a pedlar and a street trader by restricting pedlar activity to door-to-door sales.

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

If the definition of a pedlar is restricted to only those who carry out door-to-door sales, in our view there is no need to restrict the number of pedlar certificates issued. 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, it is our view that 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. It would be unfair to prevent street trading in a particular area but allow pedlary and vice versa. Due to the UK-wide validity of a pedlars' certificate, it is recommended that all applications are considered by a single body in order that restrictions may be applied in a consistent manner.

25. 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 and if so why? Would you add any circumstances to the list, if so which and why?

The list provided relates to activities which fall within the definition of street trading. The list is an example of the confusion created by the outdated definition of a "pedlar". As legislation is already available to regulate these activities as street trading, it is our view that the definition of a pedlar should be restricted to door-to-door sales.

26. Do you have any observations in relation to the ideas aired in the final paragraph above on methodology and notice?

It is our view 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 described above. In order that proper consideration may be given to applications, it should not in our view be permissible to apply for a pedlars' certificate on the day on which the applicant intends to use it. The issuing authority must have an opportunity to undertake thorough investigations into an applicant's character. It is recommended that a reasonable period (e.g. 21 days) is provided before an application may be determined. A statutory minimum consideration period would not, in our view, negatively impact on an individual's ability to trade as a pedlar.

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

No comment.

Services Directive

28. 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.

We are unaware of any evidence. However we are concerned that although street traders who provide a service will continue to require to be licensed, pedlars who provide a service will not. This may create a potential loophole which may be exploited.

Draft Guidance

29. 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.

The checklist provided clearly states the difficulty in defining the difference between pedlar activity and street trading.

30. 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.

The guidance must make clear the distinction between pedlary and street trading. At present it does not. Parallel guidance is required for Scotland by the Scottish Government.

31. 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.

At this time we have no comment to make until draft guidance is produced by the Scottish Government.

32. 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.

GLOUCESTERSHIRE LICENSING OFFICER GROUP (GLOG)



GLOUCESTERSHIRE LICENSING OFFICER GROUP

RESPONSE TO DEPARTMENT FOR BUSINESS INNOVATION AND SKILLS CONSULTATION ON STREET TRADING AND PEDLAR LAWS

Meetings of the Gloucestershire Licensing Officer Group (GLOG) are attended by representatives from the following district and unitary Councils:-

- Gloucester City Council
- Cheltenham Borough Council
- Forest of Dean District Council
- Tewkesbury Borough Council
- Cotswold District Council
- Stroud District Council
- South Gloucestershire Council

GLOG have decided to come together to provide a joint response to the Department for Business, Innovation and Skills (BIS) recent Consultation on Street Trading and Pedlar Laws and the following forms that response.

Question 1

Yes – GLOG agrees that the definition of a pedlar is in need of updating and clarifying

Question 2

GLOG feel that the word “should” in the definitions given should be changed to the word “must.” It is also felt that it is important to specify how long a pedlar can stay still in one place and how far they must travel before stopping again.

Question 3

GLOG feel that the permitted size of a trolley should be set out within the definition. This is because many pedlars make use of very large trolleys that they can barely move on their own. These cause obstruction to pavements and walkways in town centres and cause a particular problem in the run up to Christmas and at other busy times of year when several pedlars are trading in town centres and when pedestrian traffic is significantly increased.

It is suggested that the trolley should be no larger than one meter by one meter and should be capable of being lifted and carried by the pedlar on their own.

Question 4

GLOG feel that it would be desirable to place a limit on the number of occasions an individual pedlar can visit a given place in a specified period. For example GLOG do not feel a pedlar should be able to move up and down the same High Street four or five times a week.

Question 5

Yes – The current certificate does not make it easy for enforcement officers to verify and identify lawful pedlars and the suggested changes should make it easier.

Question 6

GLOG feel that the pedlar's name should also be displayed on the certificate.

Question 7

Yes - A national database would improve the current system of enforcement and certification.

Question 8

Yes – The list of information to be held on the database is complete and correct.

Question 9

No – We do not support the reintroduction of certification for pedlar service providers.

We feel that pedlars should only be regulated if they are selling goods as this would provide consistency with the regulation of street trading provided by Local Government (Miscellaneous Provisions) Act 1982.

It is also considered that any services that are provided and pose a risk to public health or safety will be adequately regulated by other legislative regimes

Question 10

It is felt that the proposed criteria could still be more objective.

One suggestion is to include a list of "relevant offences," an unspent conviction for which, would preclude an individual from being granted of a pedlar certificate. This is similar to the criteria for being granted a personal licence under the Licensing Act 2003.

Another alternative would be to use the same definition as is used to decide suitability for the grant of a street trading licence or consent under the Local Government (Miscellaneous Provisions) Act 1982.

Question 11

We feel that implementing either one of our suggestions given in response to Question 10, would provide a more consistent approach to the refusal of applications from issuing authorities.

Question 12

GLOG are broadly supportive of the proposal to transfer responsibility for issuing pedlar certificates from the police to local authorities.

This support is qualified however by the need to ensure that proper resources are provided to the local authorities to make sure that administering the regime is not going to provide a financial burden that will fall on the taxpayer.

In particular it is suggested that the fees payable for a pedlar certificate will have to increase significantly if the certification system is to be self-funding. It is also felt that the fees should take into consideration the services that are provided by local authorities in town centres, and which pedlars will be taking advantage of.

It is however also important to be aware that a certificate which will have effect nationwide may be issued by a local authority that the pedlar does not subsequently trade in. Therefore careful consideration needs to be given to how the system works in practise and we would question whether it is appropriate to have certificates issued locally and effective nationally.

Question 13

Yes – It is felt that clear terms for refusal of applications, coupled with rights of appeal are sufficient safeguards to ensure a fair and non-discriminatory regime.

Question 14

We would support this option, but question the viability of a system that provides for certificates to be issued locally but having nationwide effect.

It is felt more appropriate that pedlars should obtain a certificate from each local authority in whose area they wish to trade. This is the case for ice cream van operators who have to obtain street trading licences or consents from each local authority in which they wish to trade.

Question 15

Yes – with further work, this option is viable.

Question 16

An alternative way would be to repeal both the Pedlars Act and the street trading provisions of the Local Government (Miscellaneous Provisions) Act 1982 and replace them with legislation that has national effect and that is not adoptive.

Question 17

We do not support this option as it is considered to be complicated and would potentially lead to a “free for all” with much more itinerant trading encouraged and no

regulatory controls over the suitability and behaviour of those carrying out such trading.

Question 18

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.

Question 19

- i) Yes
- ii) Yes

These powers will provide more effective and immediate penalties and will provide a far stronger deterrent than the current enforcement options.

Question 20

The time involved in bringing a prosecution against an individual makes this a slow and expensive enforcement option, where the sanction occurs many months after the offence is committed.

For low level offending fixed penalties provide a more effective and efficient means of penalising offenders without placing further burdens on the justice system.

Powers to seize goods will also provide an immediate remedy to combat unlawful street trading, which will act as a far more powerful deterrent than the threat of prosecution. An unlawful trader without goods to sell is immediately prevented from further unlawful street trading.

Question 21

The offences should make reference to street trading consents as well as street trading licences as many local authorities operate “consents” under the Local Government (Miscellaneous Provisions) Act 1982 rather than “licences”.

Question 22

The FPN should be set at such a level as to provide an effective and realistic deterrent to the offending behaviour being targeted.

It is suggested that fines should range between £100 and £300 depending on the offence being committed.

Question 23

Yes we agree with the Department’s general perception.

Question 24

Yes we agree that provision for more enforcement options and a sufficient demarcation between legitimate pedlary and other street trading being established would address the issues of concern to some local authorities in relation to unfair trading and competition.

Question 25

Yes in some circumstances, restrictions on the number of legitimate pedlars in specified areas and at specified times are justifiable. For example when large numbers of pedlars converge on a town centre at a particular time of year or for a particular event and cause a significant problem.

However we cannot think of an occasion where this has happened to date.

Question 26

Yes we agree that the list given illustrates the circumstances under which restriction on numbers is justifiable.

Question 27

We have no observations to make.

Question 28

As we do not represent any local authority in London, we do not have a particular view on this issue.

Question 29

We have no evidence to suggest that the conclusions set out do not reflect the actual position either in respect of the Department's perceptions of numbers of pedlars of services only or in respect of the Department's understanding of the requirements of the services directive.

Question 30

Yes the checklist is an adequate one-page summary detailing what legal street selling looks like.

Question 31

Yes the draft guidance appears to meet the needs of the target audience.

Question 32

We have no suggestions for amendments to the draft guidance.

Question 33

We have no further observations or comments to make.

HEREFORDSHIRE COUNCIL

To Whom It May Concern,

We at Herefordshire Council are pleased this important area is being looked at with a view to reform and modernisation of the pedlars act. They are a nuisance on occasions in Hereford, especially in the 4 week run up to Christmas where we can have up to 11 pedlars in, often engaging in static street trading rather than peddling and certainly using trolleys or cages larger than that likely to be intended as a 'small means of transport' under the Act. We would like to see the law clarified on how a bona fide pedlar should operate, particularly with regard to how big their trolley can be and how long they can stay in one place before being required to move and also how far they should have to move. A more effective enforcement regime would be welcomed with powers of seizure for officers, fixed penalty notices and more severe fines from the courts for convictions.

Please find below a list of responses to the questions posed in the consultation, in the order they appear:

1. Yes.
2. List is fine as it is.
3. Dimensions of a permitted trolley should be stipulated.
4. No alternative suggestions
5. Updating the certificate as described will make it easier to enforce. More meaningful and appropriate information will be obtained than we currently get. A standardised template will be beneficial.
6. Proposal is suitable.
7. Yes
8. Yes
9. Not seen as a priority. Majority of pedlars in my experience are goods based.
10. Yes
11. Yes
12. Local Authorities deal with Street Trading and are better placed to deal with pedlars than the police, though police assistance on the street is always useful when tackling pedlars on the street.
13. Yes
14. Modernisation of the Pedlars Act is preferable to incorporating it into the LGMPA 1982, which some local authorities have not adopted or adopted in different ways, e.g a consent regime rather than a licence regime.
15. Possible, but need to see how it could work consistently on a nationwide basis.
- 16.
17. Puts onus on local authorities to set policy, which takes up resources and could be piecemeal/sub standard.
18. Option D
19. i) Yes
ii) Yes
- Deterrence and speedy action then possible.
20. Prohibitive cost and time resources needed are the major factors why enforcement is not effective. Proposals under option D would alleviate this.
21. Complete and Correct.
22. Somewhere reasonable for severity of crime but must pose a deterrent.
23. Agree
24. Agree
25. Agree
26. Agree

- 27.
- 28.
- 29.
- 30. Agree with the checklist as it is.
- 31. Yes
- 32.
- 33.

Trust this is of use,

Kevin Price

Licensing Officer - Street Trading

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