

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

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TORBAY COUNCIL

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Date: 8th February 2010

Deba Hussain and Roger Dennison
Consumer and Competition Policy Directorate
Department for Business, Innovation and Skills
Bay 416
1 Victoria Street
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Dear Sirs

Consultation on Street Trading and Pedlars

I am writing to you to respond to the Department for Business, Innovation and Skills consultation on the above dated 6th November 2009.

I think it would be helpful for the reader to understand the position Torbay Council takes with regard to Street Trading and Pedlars. It adopted the provisions of Street Trading (Schedule 4), from the Local Government (Miscellaneous Provisions) Act 1982 as far back as 1983. It has subsequently reviewed its Prohibited and Consent Streets a number of times since.

The latest review was in 2008, when a member (Councillor) working party was established. This took evidence from many parties including the traders within the three towns that make up Torbay.

One of the key outcomes was to tackle the significant number of traders that have sought one exemption or another over the years to trade in our three town centres. Most of these were as Pedlars, with Pedlar certificates. This included tattooists, scarf sellers, face painters, hair braiders, wire benders and the like. Following legal case elsewhere, that establishes many of these are in fact Street Trading, a decision was made in Torbay that they should all be considered Street Trading and addressed through changes in policy.

The overriding view and responses from the local consultation exercise, was that this would make Torbay a more attractive location to visit. This would help support the setting up of a Business Improvement District within Torquay, and in the longer term help with the economic regeneration of Torquay and Torbay.

It is the general view that the vast majority of Pedlars are not true Pedlars, but Street Traders circumventing the existing provisions put into place by Torbay Council's adoption of Schedule 4 of Local Government (Miscellaneous Provisions) Act 1982. Torbay Council would therefore not support any changes that give "Pedlars" a continued opportunity to trade or worse still, a stronger opportunity to circumvent the Street Trading legislation. The answers that follow to the questions will reflect that.

Question 1:- The definition does need updating, but inclusion into the Local Government (MP) Act 1982 would make more sense.

Question 2:- The definition proposed under Section 49 undermines some if not all the work that has taken place in Torbay to date. This is an open invitation to street trade, albeit across districts. This makes the changes nowhere strong enough. What really is the difference between this definition and street trading, except a limit on the fact a Pedlar cannot operate from one spot? An example of how this will be circumvented is a tattooist, once they have engaged trade, will often find they have a queue, hence no need to move very often.

Question 3:- Tattooists and scarf sellers have these huge trolleys. Again they are street trading, and a size limit would simply legitimise their activity, though it will limit the size of their trolleys so it might help.

Question 4:- Do away within the principle of Pedlar, all together, or limit it by an exemption in LG (MP) Act 82, but giving it a much tighter definition. "Pedlars" could apply for a single day Street Trading Certificate or a slightly easier position would be that they can only visit an area once a month.

Question 5 & 6:- Not necessary. It would be costly to implement. It would not be Torbay Council's preferred option. Torbay Council would prefer to put as an exemption into LG (MP) Act 1982.

Question 7-9:- A new database would be expensive, difficult to keep updated. If exemptions were included in LG (MP) Act 82 this would arguably remove the need for this. It again returns to the same point, that do we even need "Pedlars" and if so I would argue it is in such a limited way that could be treated as an exemption to the 82 Act.

Questions 10-11:- Agree with section 69, but do we really need to have certificates. See general points above.

Questions 12-13:- Agree.

Questions 14-16:- A better idea, but in reality same outcome and concerns as above.

Question 17:- Preferred option. However, the definition of Pedlar must be much tighter, than that which is proposed under paragraph 49. This proposal would not give the local authority the opportunity to control their prohibited areas as may be envisaged by paragraph 85.

I would recommend that should BIS adopt this approach, they revisit the subject of what really is a Pedlar. It should not just be another loophole to avoid Street Trading legislation, which is what it is now. Question 17 is the one that involves the least work, so therefore is the best, but Torbay Council still remains very concerned as it changes very little in our opinion.

Question 18:- Option D.

Questions 19 & 20:- To give both powers to local authority officers. Most, if not all local authorities, already have officers issuing fixed penalty notices and undertaking seizure. However an additional offence could be “not giving local authority officer” your name and address, as occurs with the Clean N & E Act.

Question 23:- Do not fully agree with paragraph 97, simply because it again assumes there are lots of legitimate Pedlars. In reality they are mostly street traders, who are using it as a loophole to trade in town centres against Prohibited Street Designations. This is why the definition of a Pedlar needs to be tighter.

Question 24:- Torbay Council remains unconvinced that anything proposed, will do anything significant to help address the concerns of Pedlars/Street Traders operating in Prohibited Areas/streets in Torbay.

The simple reason is that the loophole, as Torbay Council sees it, remains, and LA’s will have to spend precious resources collecting evidence to demonstrate whether someone is a Pedlar, i.e. they are moving some of the time, or a Street Trader.

FPN might help, but not without the offence to refuse to give an LA officer ‘your details’ as in the Clean N & E Act.

Question 25:- As a seaside local authority, and extra powers to control those that drift in to sell under paragraph 103 who be considered helpful.

Question 26:- Yes very much so. (I think that it can be argued that the “areas/streets being prohibited” should be very much less than under Street Trading.)

Question 27:- It is a possibility of something to consider further.

Question 30:- Checklist style is a good idea. But as you will have noted from the answers above Torbay Council doesn’t agree that the list will address the concerns of LA’s generally about illegal street trading.

Question 31:- Useful for background information only.

To summarise, Torbay Council generally supports a review of the legislation, and feels that an exemption in the Local Government (Miscellaneous Provisions) Act 1982 is the least resource intensive way to undertake this. However Torbay council remains very concerned about these proposals and feels an opportunity is being lost. The definition of what a Pedlar is needs to be much tighter than proposed and Torbay Council would want to still have the opportunity to Prohibit ‘Pedlars’ from certain streets.

Torbay Council would also wish to have the opportunity to be consulted again as this consultation was very wide ranging in its nature and its questions. I understand this is likely.

If you have any queries then please do not hesitate to contact me.

Yours faithfully

Steve Cox
Principal Safety and Licensing Officer
Safety and Licensing Section

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Our Ref Consult/PST
Your Ref
Date 12th February 2010

Dear Ms Hussain

**RE: STREET TRADING AND PEDLARY LAWS: A joint consultation on modernising
Street Trading and Pedlar Legislation, and on draft guidance of the current regime.**

I welcome the opportunity to respond to the above consultation on behalf of Trafford Council's Public Protection Service. The Borough of Trafford is an area of great diversity and contrasts and brings together a mix of inner city, suburban and rural communities. Trafford lies in the South West of the Greater Manchester conurbation, and covers an area of approximately 40 square miles. Trafford's population in 2001 was estimated as being 210,000, this figure derived from the National Census. Trafford is also the home of Manchester United Football and Lancashire County Cricket Club, both of which host matches as well as open air concerts. To a large degree our response is based on previous experience in carrying out enforcement activity at such events, which attract crowds of up to 76,000. The activities of pedlars at these events and the failings in current legal controls to address the negative impacts of 'pedlary' are an ongoing challenge that impacts on scarce local resources.

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 example of using a trolley to carry stock should be removed. As per the current definition of a "pedlar" he should be required to carry his wares.

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 see the use of trolleys as problematic, particularly amongst big crowds at the egress of large audiences at major venues. We would prefer the use of trolleys to be prohibited with a requirement that a pedlar carry his wares.

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

We don't not believe pedlars should be permitted to use a vehicle such as a trolley to carry their wares as this allows them to increase the quantity of goods they sell and can create problems for enforcement as the trolley which is acting as a stall remains static and the "pedlar" is moving.

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. Currently there are a number of formats available which vary from Police force to Police force and make identification extremely difficult especially those which do not have a photograph attached. We have in the past had forged/false pedlar certificates seized by the police and also there is evidence of the same pedlar certificate being passed around and shared between a number of traders. A national format including a photograph would be of benefit.

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.

Date of birth should be included.

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

Yes, providing it is easily accessible to the enforcement community.

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. It would be of benefit to be able to include previous convictions or warnings from either the police/street trading or trading standards providing appropriate security of data could be ensured.

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.

Potentially yes, but it would require further work. This authority, like many, suffers the impact of itinerant rogue tradesmen who target the elderly and vulnerable and charge them exorbitant fees for shoddy work on their homes and are often difficult to identify. If service providers also had to be licensed then in theory there would be a record of that individual and it may deter the number of itinerants carrying out this work.

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 there are issues around the current lack of a national database for holding all relevant adverse information.

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

Yes as long as the database was regularly updated

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 would not support such a move. The Police already have systems in place that support some ability to carry out checks "in the field". If it were transferred to local authorities the needs for full recovery of costs and access to relevant police held data would need to be addressed.

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 there are sufficient appeal processes available.

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

Revocation of the requirements to be certified could cause a significant increase in the number of traders touting for business and selling their wares which could create problems for effective enforcement. However a potential benefit for the local authority could be the creation of zones and areas of prohibited streets to prevent any trader selling, which is currently by-passed by the Pedlars Act.

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

It will be dependant on each local authority to police and adapt current street trading provisions. One option would be a one off licence for events such as a concert or football match where a limited number of certificates could be issued for the one event and only those people who applied can trade. The local authority would then have a record and would be able to identify those who have been granted a licence to trade at that event. It would also reduce the number of traders at such events.

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

This would require further research.

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

As per answer to Question 15 One option would be a one off licence for events such as a concert or football match where a limited number of certificates could be issued for the one event and only those people who applied can trade. The local authority would then have a record and would be able to identify those who have been granted a licence to trade at that event. It would also reduce the number of traders at such events.

Enforcement

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

Option D: Provide local authority enforcement officers in England and Wales with powers to issue FPN's and powers of seizure, with forfeiture by order of the Courts.

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.

Both. Issuing of FPN in the first instance but for repeat offenders goods need to be seized. When seizing counterfeit goods from pedlars they have often not yet paid for the goods themselves and losing stock and income can have a significant impact and they still have to pay their suppliers for goods they no longer have.

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?

Fixed Penalty Notices will enable immediate action being taken by offenders and seizure of goods will ensure an immediate stop to illegal trading and deter others from committing the same offences.

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.

At the level of £100 - £200 which should act as a deterrent and be viable for councils to pursue recovery.

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? 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?

We agree with the illustrated examples.

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

In our experience, the weather is not a deciding factor to trade – events such as concerts and football matches go ahead irrespective of the weather in most cases and it is very rare to see a decline in the number of pedlars present at the event.

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.
Magistrates Court in line with the rest of the country to ensure a fair uniform approach is upheld.

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.*

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.

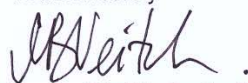
Question 31: Do you think the draft guidance meets the needs of the target audience, i.e. enforcers and traders, including pedlars? Please give reasons for your answer.

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.

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 answers to questions 29 – 32 have been provided as we consider that this sort of detail is best considered, as LACORS suggest, by a bespoke working group.

Yours sincerely



Head of Public Protection

WESTMINSTER COUNCIL

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Dear Sirs

**Street trading Pitch and pedlary laws: A joint consultation on modernising
Street Trading and Pedlar Legislation, and on draft guidance on the
current regime**

Thank you for the opportunity to comment on the proposals for change to laws relating to street trading and pedlary.

Westminster is in a unique position in relation to street traders and pedlars, both because of the consistently high levels of pedestrian footfall in many of the commercial areas of the city, but also because of the unique legislative regime which regulates street trading throughout the city.

Pedlars are street traders. They trade in the street but seek to differentiate themselves from other street traders by a method of trading defined in the 1871 Act and subsequent case law.

The Local Government (Miscellaneous Provisions) Act 1982 enables local authorities to adopt a regulatory regime in relation to street trading, but specifically exempts trading by pedlars holding a certificate under, and trading in accordance with, the Pedlars Act 1871.

The City of Westminster Act 1999, (the 1999 Act), which currently regulates street trading in Westminster, and the London Local Authorities Act 1990 as amended, includes the regulation of pedlars except where they are trading from door to door. However, provision for itinerant traders is included in the 1999 Act which permits the Council to issue temporary licences to individuals to trade within the City for a specified day or number of days.

Prior to the introduction of the 1999 Act the City was plagued with illegal street traders claiming to be pedlars, to the detriment of highway management, licensed street traders and retailers, and the majority of people on the street. Large numbers of traders persistently trading in inappropriate locations put a huge burden on the council street enforcement team to take action in respect of illegal traders, particularly where holders of pedlars certificates who in the opinion of the council were not trading in accordance with the provisions of the Pedlars Act.

The City Council believe that all trading in the street should be regulated under a single licensing regime. This is necessary to promote fair and consistent competition for traders in the street, to ensure effective enforcement of illegal trading, and to provide for effective management of the public realm, for the benefit of all uses of the street.

The 19th century concept of a pedlar is no longer relevant to modern cities. The reality of a pedlar, known and certified by the local police and then travelling and trading on foot in local goods or crafts, is simply not born out today. Often, organised gangs of itinerant workers, with certificates issued hundreds of miles away, are employed to sell mass produced goods at peak times and locations, without any regard for the impact on local traders, street management or communities. It is because of this reality that we believe that in the City of Westminster pedlars should be treated in the same way as other traders in the street where a local authority has found it necessary to adopt legislation to control street trading.

Although not consulted on directly we are concerned by the stated intention at paragraph 105 of the consultation document that the Government would seek to repeal existing local Acts. Westminster has pursued costly and time consuming local Acts to combat the problems with illegal street traders and pedlars because of the unique local conditions which exist in the city. Parliament has passed other different private Acts in other local authorities to deal with

different local conditions in those areas. The research by Durham University, limited though it was, recognises the need to retain local discretion in addressing the different problems which arise in different localities. Unless the proposals permit local authorities to retain the same level of control as exists in their current schemes, this ability to address local problems will be compromised.

Against the general comments above we would comment on the specific questions in the consultation as follows, although in many cases, especially in relation to the certification of pedlars, the provisions are not directly relevant to the current regime in Westminster:

Q1. An updated definition of a pedlar is clearly needed where no local legislation to control street trading has been enacted.

Q2. The definition should **not** allow for the provision any means of transporting goods as this leads to increased congestion on the highway and encourages the trader to remain in the same position. Goods should be carried at all times.

Q3. n/a. see above

Q4. Whether making sales or not the trader should not be permitted to stay in the same place for more than a short period of time, preferably defined in the Act, e.g. 5 minutes.

Q5. The certificate needs to be updated and improved. Issuing authorities should be able to recover their costs for the administration of the certification scheme, including reasonable costs for enforcing it in their area.

Q6. The certificate should include the date of birth of the trader. The application should require details of previous certificates or refusals and an offence should be created for the giving of false details.

Q7. A national database would improve enforcement.

Q8. The database should include details of any relevant convictions, including sanction imposed, and FPNs issued.

Q9. Certification should include service providers. This can be justified by the impact that any commercial service provision in the street is likely to have in respect of public safety and highway management.

Q10. The requirement to be “of good character” needs to be replaced.

Q11. Yes.

Q12. Local authorities rather than the police should administer any certification scheme.

Q13. Powers of revocation need to be included.

Q14, Q15, 16. This proposal is not relevant to Westminster.

Q17. This proposal most closely represents the current position in Westminster and is supported in principle. Key to its success would be the range of circumstances under which a local authority could restrict the activities of pedlars. Local authorities could be given a power to restrict all street trading activity in certain areas or at specified times.

Q18. The extended powers available to Westminster have proved more effective in dealing with any illegal street trading.

Q19. The powers should include powers of seizure and forfeiture upon conviction.

Q20. All of the powers proposed increase the effectiveness of enforcement and reduce enforcement costs.

Q21. Yes.

Q22. The level of fixed penalty would need to be consistent with other FPN levels applicable in each respective borough.

Q23. We disagree with the Department’s general perception. We believe that pedlars can cause problems on the street, and allowing unrestricted numbers unregulated access to trade in the street undermines the street trading regime where it is adopted. It is also true that pedlars attempt to use their certificate to

justify illegal street trading, which contributes to the high costs and enforcement burden which falls on the local authority.

We also believe in diversity in the market place and promote street trading where it is appropriate to do so. We do not believe however that in terms of overheads, pedlars can be compared with licensed street traders. It is true that street traders have lower overheads than retail shop outlets but we are not of the opinion that this represents unfair competition between them. The additional customer facilities justifies a differential in overheads.

We do not agree that the difference in overheads between licensed street traders and pedlars can be justified in the same way. Licence fees are levied to include the costs not only of issuing the licence but include contributions to refuse, cleansing and enforcement costs, including enforcement of unlicensed street traders and for the privilege of trading at a designated fixed site. A pedlar pays a nominal sum elsewhere for their certificate, and has the freedom to go to the most lucrative sites to trade. Also, street traders often trade on a regular basis and can provide a service to the local community with which they identify. Pedlars in contrast often cherry pick the occasions they come to a particular locality to take advantage of only the most lucrative trading environments, such as fairs or special events.

Pedlars by definition have no fixed trading location and often have barrows or stalls on wheels which they take with them. Inevitably in busy city centres, including in the case of Westminster some of the busiest streets in Europe, problems of highway congestion and obstruction are caused which require intensive real time monitoring and enforcement.

Q24. The proposals referred to in this question will not address our concerns in relation to pedlars. It is not true to say, as you state in paragraph 98, that the trading activities of pedlars was restricted *by default* when the activities of pedlars was restricted in the City of Westminster Act 1999. The reasons for the intentional restrictions on pedlars within Westminster are explained above, and were accepted by Parliament when the Act was passed.

Q25. Restricting the numbers of pedlars in an area is unenforceable. They are all required to constantly move, and even if a local authority could afford to constantly monitor an area, it is nearly impossible to easily determine at any one point in time whether a pedlar was trading or not. It has been common for

pedlars when approached by enforcement officers when stationary to claim that they were temporarily not trading at the moment they were approached.

Q26. We agree that all the listed circumstances would justify restricting and excluding pedlars. The unique nature of the numerous iconic sites in Westminster however means that unreasonable numbers of itinerant are not attracted seasonably, but are attracted to Westminster throughout the year. It is for this reason that Parliament has approved the current restrictions which have been placed on pedlars and street traders in Westminster.

Q27. Provision for temporary street trading licences to permit trading for a single day is already provided for in the 1999 Act. This allows the council to regulate the numbers of traders in a street.

Q28. We believe that appeals should be limited to the Magistrates Court, with no further appeal to the Crown Court. We also believe that those matters which are subject to appeal should be reviewed, as some are inappropriate for determination at the Magistrates Court.

Q29. We believe that pedlars of services should be subject to street trading regulation, and that this is justified under the Services Directive because of the impact they can have on public safety and highway management.

Q30. The summary is inadequate and unhelpful. It is not a comprehensive legal statement and contradictory in offering guidance as to the use of “trolleys”.

Q31, Q32. Given our fundamental opposition to permitting unregulated street trading by way of pedlary outlined above, it is inappropriate to comment on draft guidance at this stage.

This response is intended as this early stage of consultation to give an overview of the council’s position, but has not been formally endorsed by members of the council. For that reason we ask that this response be treated as confidential.

We note paragraph 41 of the consultation document and would welcome an opportunity to respond more fully to any further proposals.

Yours sincerely

Chris Wroe
Licensing Policy & Strategy Manager

WEYMOUTH AND PORTLAND BOROUGH COUNCIL

Please find attached responses to your consultation document.

Regards

Sue

Sue King
Licensing Officer
Weymouth & Portland Borough Council
North Quay, Weymouth, Dorset DT4 8TA

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?

Suggested cost of permit

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, too many have extensions added to the original trolley for display purposes and they take up a great deal of pedestrian space.

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. Photos in particular are a good idea as we have information of a group in East Anglia who are passing certificates around

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 but has the cost been considered.

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: 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, not necessary

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, it would give us more control. At present pedlars do not have to show their certificates to Local Authority Officers. The PCs on the beat and/or PCSOs have limited knowledge of the law relating to pedlars.

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?

Good idea. We have adopted consent streets but legitimate traders are reluctant to pay when pedlars are able to trade for a fraction of their fees/overheads. We therefore have to be very pro-active about pedlar enforcement at present despite the fact that this should be a Police function. Clearer terms and national consistency would help to reduce this burden.

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

Yes, all Councils could adopt it and have prohibited streets if they wished

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

No

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

Very messy – it would be different in every Borough

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, It would give us much more control and seizing any existing certificate would be helpful too. Seizing goods would be an effective financial deterrent as many view the fines as a minor irritant.

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?

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

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.

£50 - £100 seem reasonable but happy to go with the higher amount of £100 - £300 if generally acceptable

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? 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, No, No.

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

Daily licences seem impractical and burdensome from an administration point of view.

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.

N/A

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.*

N/A

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, I feel it does meet both needs. The Local Authority would have more control and if pedlars apply for their certificates to the Local Authority we can be sure that they are made aware of the rules and regulations.

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 comments

WIGAN

Good morning to you all.

As you will see, I am the Senior Licensing Enforcement Officer for Wigan. We have a busy town centre both during the day and evening. The evenings, particularly at weekends when the Night Time Economy kicks in. Our town centre and the other at Leigh some seven miles away are blighted by numerous and various pedlars who sell virtually anything they can, coming into the town under the guise of pedlar, when in fact they are traders who have web sites and the like and are selling large amounts of perfumes/ clothing etc. especially on the build up to Christmas.

When challenged, they produce pedlars certificates issued by any of the Police Forces and claim to be pedlars. It is quite apparent they are flouting the spirit of the legislation and cause annoyance to established shopkeepers and public alike.

A re think of the legislation is way over due and is welcome. However the legislators need to get this right to allow for a huge change in the kind of people do business and the way they go about it.

Our advice to pedlars is to perambulate around areas of the town centre and stop when required to do so by a potential customer. The problem for us is that the definition of a pedlar is based upon the good old bad old days of horses and carts/ shanks' pony and the true meaning of skill/ wares. Not many Wiganers bring their broken pots and pans and blunt scythes into the town these days, nor do they wait for the pedlar to pass on foot through their village.

It would suit me fine if a revamp of the definition included a genuine pedlar with clearly defined skills relating to the basic meaning of a pedlar, including a vehicle definition from where he/ she could work, in a street out of a town centre. There might not be many of those, but they probably exist. The genuine article.

Secondly, those who are selling new items for a price less than £2 each, who must be on foot, having with them at the time and carrying all goods they wish to sell, without any means of table/ bench/ display etc. No use of any device other than that carried by them. No use of trolleys/ stands/ tables whether free standing/ wheeled etc who must remain mobile at all times. To register at the Police Station each time they visit that town, declaring what they are selling and where. This allows the clerk/ constable the opportunity to confirm the identity etc of the seller and of course to build up intelligence of visits. Also to have in their possession National Insurance number for production.

Thirdly, those selling items more than £2 but less than £5 with above criteria. The cost of a certificate would vary say, £15 for the genuine article. £25 for the Less than £2 seller, and £35 for the more than £2 per item seller. I also believe that pedlars should be subject to CRB check because they have unrestricted access to infirm people and young children. Why should they wander around our towns without us knowing who they are, their intentions and their background. Taxi drivers are CRB checked, Scout Leaders are, Trading Standards Officers are. Are these strangers in our midst any different?

Street trading is a different area and problematic.

I assume that different councils have their own by laws. We have, but the policy relating to mobile and static traders is out dated, very unfair and flawed. For example, a static street trader (burger seller) pays an annual fee to remain in one place and cannot trade within 200

yards of a similar business. However a mobile seller paying a higher fee can trade anywhere and therefore trade alongside a static trader, take their trade off them, then move on to another site. In my view totally unfair and makes my job even more difficult. National standards are required relating to how they trade, but leave the fees to the respective councils.

Just a couple of ideas, even though I may have wandered from the intended thread.

John Brabbin

Senior Licensing Enforcement Officer
Crime and Community Team
Community Protection Section
Unity House
Westwood Park Drive
Wigan WN3 4HE

WOLVERHAMPTON COUNCIL

We have gone through the document and agree that the changes you propose need to be done

John Eccleston,

Principal Environmental Enforcement Officer,
Public Protection, Civic Centre, St. Peter's Square, Wolverhampton. WV1 1DA.

YEOVIL COUNCIL

19 January 2010

Dear Sirs

Thank you for giving the Town Council the opportunity to comment on the above Consultation Paper.

The Town Council is concerned at the shortcomings of the present system and wishes to draw to your attention the significant problems facing licensing authorities, which regulate street trading, in taking enforcement action against pedlars whose activities effectively constitute street trading.

There have been a number of legal challenges by licensing authorities in whose areas such activities have taken place. However, this is an expensive and lengthy way of dealing with unauthorised street trading.

A more effective way would be to transfer the power to issue permits from the Police to the relevant local authority in whose area the pedlar wishes to work, and to provide such authorities with the power to issue identity card style permits to suitable applicants, and to restrict such activities where and when it is considered appropriate to do so.

This would avoid the need for a national database, and would place peddling on a similar footing to street trading and give local authorities the ability to regulate their activities taking into consideration the interests of the general public, licensed street traders and permanent shopkeepers.

The definition of peddling also needs to be clearly outlined in new legislation, so that there is no doubt as to what constitutes lawful peddling.

It is also suggested the power to issue fixed penalty notices or on-the-spot fines in respect of street trading, and similar powers of seizure from suspected offenders with forfeiture by order of the courts would assist with enforcement action. Such powers are already granted to other local authorities in London and by way of private acts and have assisted with the regulation of activities that constitute street trading.

I would be most grateful if you could kindly arrange for the above-outlined comments to be taken into account in the consultation process, and would keep me informed of developments.

Regards

Alan

Alan Tawse
Town Clerk

Yeovil Town Council
Town House
19 Union Street
Yeovil
Somerset
BA20 1PQ

YORK CITY COUNCIL

Please find attached the consultation response to the Consultation on modernising street trading and pedlar legislation. It was the subject of discussion with the City of York Councils Licensing Committee on 8th January 2010.

<<Pedlars questionnaire.doc>>

John Lacy
Licensing manager

<p><u>Certification Process</u> Question 1: do you agree that the definition is in need of updating and clarifying? If not, please provide your reasons.</p>	<p>Yes City of York Council agrees that the legislation is woefully out of date. Many of the problems with pedlars stem from a 100-year-old law that allows them to take advantage of a rule that makes it very difficult for the police and local councils to move them on and exempts them from more recent trading laws.</p>
<p>Question 2: Do you think anything should be taken out or added to the list and why?</p>	<p>There clearly needs to be a new definition in relation to pedlars to reflect modern times – An issue for York is in relation to the size of trolleys used in the narrow street and the sheer number of pedlars who trade in one street. Present law allows pedlars to trade 365 days a week in one city – Definition should reflect travelling from town to town – and limiting time in one town or city.</p>
<p>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.</p>	<p>The permitted size of the trolleys is a real issue. The size and design should be regulated and limited. York experiences trolleys from wall pasting tables on wheels to supermarket cages. If trolleys are used subject to recommend size, design and be safe should have public liability insurance – the same as market traders</p>
<p>Question 4: Do you have alternative suggestions? Please provide them.</p>	<p>Trolley sizes should if not banned and brought under modern legislation should be stipulated and the subject of being insured – covered by public liability insurance. Be of safe construction and approved.</p>
<p>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.</p>	<p>Current pedlars certificates are based on a paper certificate with limited detail. They are easily copied or forged. There is no consistency with the issuing police forces. There needs to be all the details as outlined in the report – together with date of birth, photograph in smart type card with security</p>

	measures. This is vital to ensure meaningful enforcement.
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.	Should include the commodities allowed to be sold by individual pedlars and the eligibility of foreign nationals to work.
Question 7: Do you think that a national database of pedlar's certificates will improve the current system of enforcement and certification?	It is vital if local authorities are to tackle the issue. Currently there is no way of verifying pedlars certificate or their eligibility to work. Many certificate do not include a date of birth. Pedlars is a low priority for the police
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.	Should also include foreign nationals eligibility to work
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.	City of York Council supports the reintroduction of certification. This will establish whether a person is fit and proper to hold a pedlars certificate. Certificate should be granted where the applicant has resided in the local area for 1 month – age limit 17 of good character and have signed up to a code of conduct.
Question 10: Do you think the proposed criteria will offer clarity of what is expected of a pedlar in terms of their suitability to hold a certificate?	Yes there has been a wealth of case law over the years and this should be reflected in what is expected of certificate holders. As an authority we provide guidance notes – but they need to be consistent with other authorities.
Question 11: Do you think the proposed criteria will lead to a more consistent approach to refusal of applications from issuing authorities?	It is vital that each police. force/local authority has a consistent approach.
Question 12: in your view, should responsibility for issuing pedlar's certificates be transferred from the police to local authorities? Please give reasons for your answer.	Yes local authorities are better qualified to deal with pedlars because we already deal with and issue permits for street trading. It is of low priority with police forces that do not own the problem. More and more legislation is being transferred to local authorities for example Licensing and Gambling – Pedlar should be next.
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 the same procedure should apply to the issuing of pedlars certificates as to the issuing of personal licences in the Licensing Act 2003 – a right of appeal to the Licensing and Gambling Committee /Magistrates

Question 14: What are your views on the above option, and how this might affect street trading or pedlar activity?	It is time to update the legislation in respect of pedlars giving local authorities the power to adopt and regulate.
Question 15: With further work, do you think this option is viable? Please give reasons for your answer.	Yes it would bring street trading under one piece of up dated legislation giving a consistent approach and protection to legitimate traders. Schedule 3 of the LGMA 1982 is an adoptive piece of legislation. It would then be down to each authority to adopt.
Question 16: Are there other ways of maintaining the national access to pedlar certificates other than under the pedlars act?	As above bring the issue of pedlars under the LGMA 1982
Question 17: What are your views on the above option? Please give reason for your answer.	There has to be a local input to reflect local trading issues. For example to exempt trading in some adopted streets or when streets are congested at Festivals of Christmas periods. Limits need to be placed on streets as you can have up to 10 pedlars in one street.
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	City of York Council favours Option D . this will provide local authority enforcement officers with power to issue FPN and a power of seizure with forfeiture order. Offences are low level and suitable to be dealt with by way of FPN. Councils need designated officers who are able to seize goods fake or not. Currently only Trading Standards Officers have this power. It should be noted some authorities do not have Trading Standard Officers.
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?	Trying to enforce current pedlar legislation is very time consuming with offences being taken to the Magistrates Court. For example it can cost over £1000 to secure a conviction- with the pedlars being fined £120.
Question 21: Is this list of offences in respect of fixed penalty notices complete and correct? If not, please state which offences you would add or takeaway, and why.	New offences need to be created in respect of trolleys, and if using a trolley public liability insurance.
Question 22: At what levels do you think the fixed penalties should be set? Please give reasons for your answer.	£80 to £100. Felt this level of fined would be a deterrent to pedlars who can make a substantial amount of money trading illegally.

Question 23: Do you agree with the Department's general perception. As set out above? If not, please explain.	Agree with the Departments perception – better legislation should give local authorities the power to examine the goods on sale to make sure not fake.
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	Yes tighter legislation, controls and checks would address issues of concerns for market traders, local businesses. Local authorities and the public. It would provide extra protection for all.
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.	It is vital that the number of pedlars is limited at specified times and in identified street. In York's narrow streets we often find 10 pedlars trading with large trolleys at the times when the streets are congested.
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?	Agree with list. Sheer volume of pedlars with large trolleys causes unnecessary obstructions and access for emergency vehicles. Also when pedestrian streets reopen to traffic they cause obstructions.
Question 27: Do you have any observations in relation to the ideas aired in the final paragraph above on methodology and notice?	Similar to the policy adopted on street collections in York there should be a limit on the numbers in each street.
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.	N/A

<p>Services Directive</p> <p>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 in respect of our understanding of the requirements of the services directive, please provide it. <i>Note that a pedlar of goods and services will need to be certified in order to trade as a pedlar of goods.</i></p>	None
<p>Draft Guidance</p> <p>Question 30: Is the checklist at the front of the guidance an adequate one-page summary detailing what street selling looks like? Please give reasons for your answer including anything you would like see added or removed.</p>	<p>No it does not reflect the issues being experienced in York by pedlars on the streets below are the real issues</p> <ul style="list-style-type: none"> • Shoddy and dangerous goods being sold • Harrassment of the public • Trade being taken away from retailers • Street pedlars detract from the shopping on offer in the town centre • Market traders and specialist markets pay for the privilege of trading in the city, pedlars appear at events and on market days to take advantage of footfall especially over the Christmas period effecting traders.
<p>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.</p>	The draft guidance is useful bringing together the wealth of case law.
<p>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 form, and why.</p>	None other than the law is woefully out of date and needs bringing up to date.
<p>Question 33: If you have any other comments or observations, in particular any information on possible costs relating to options (see Impact Assessment), we are happy to receive them as well.</p>	None