

**Responses to BIS and Scottish Government Consultation on
Modernising Street Trading and Pedlars Legislation - Local authority
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KNOWSLEY BOROUGH COUNCIL
To Whom It May Concern

Please find attached a response from Knowsley Council relating to the Street trading and pedlary laws consultation on modernising Street Trading and Pedlar Legislation. Please note this response is subject to Cabinet Member Approval.

Alan Shone
Consumer Protection Manager
Knowsley Borough Council

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We agree that the current definition of pedlar is outdated and does not truly reflect modern trading methods. This creates uncertainty particularly amongst enforcement officers and leads to a climate that is not conducive to the principles of Better Regulation.

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

We are satisfied that the proposed definition of pedlar contains all the necessary elements and embraces current case law. However, we would suggest that some form of clarification is required in relation to the means of transporting the goods since this factor is crucial in differentiating pedlars from street traders. This could include some of the criteria from leading cases such as *London Borough of Croydon v William Burdon*.

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 do not advocate specific dimensions of trolley sizes to form part of the definition of pedlar. To support the principles of Better Regulation, and indeed the findings of the Court, we would suggest that what is considered a reasonable means of transport of goods should depend on the specific circumstances of the case. It is important that the definition is not too prescriptive and allows for a degree of flexibility and discretion amongst enforcement agencies. It is also likely that as trading methods and technology progress, means of transport of goods other than trolleys might become more significant.

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

We would support the proposed new definition of pedlar subject to the comments made above.

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

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. reasons for your answer.

We strongly agree with the need to radically update the system of pedlar certification which at the moment is both inconsistent and leads to difficulties in enforcing street trading provisions. The proposals for a standardised certification scheme would promote the objectives of Better Regulation particularly consistency, transparency and certainty.

We therefore agree with the consultation proposals that future pedlars' certificates should contain the following information:

- Photograph of pedlar
- Address
- Date of birth
- National Insurance number
- Expiry date
- Unique Number
- Name of issuing force and relevant contact details (to enable verification of details)

We would also suggest that the certificate should be in a credit card format and should be carried by the pedlar at all times.

These suggestions would greatly ease street trading enforcement by providing a ready and verifiable means of identifying pedlars and their status. This information is crucial in any enforcement scenario and would be vital if the proposals for creating the power for officers to issue Fixed Penalty Notices are enacted.

The current regime provides barriers to obtaining information as to identity of pedlars and in our opinion encourages misuse of the certificate by both transfer to unauthorised pedlars and forgery.

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

As detailed above, we believe that a modernised, uniform certification scheme would greatly assist in the enforcement of street trading provisions in relation to pedlars. Key to this would be the ability to verify the authenticity and identity of individuals.

In consequence, we believe that a national database of pedlars would facilitate this process. However, the question arises as to which body would be responsible for maintaining the database and managing the exchange of information passing to and from enforcement agencies. It is likely that the body that is chosen will incur significant cost both in terms of technology and human resources. We believe that such a cost should be recovered from pedlars' licence fees.

In order for a complete indication of the character of any pedlar, which would assist any enforcement activity, it is vital that all relevant conviction data is captured on the database. This would include both information held by the Police (including the Police National Computer) and the Office of Fair Trading (OFT) Central Register of Convictions on Trading Standards offences such as the supply of counterfeit goods.

We would therefore suggest that for such a system to prove effective, information protocols between each Police force area, the OFT and local authorities on information exchange would be required.

Finally, we are of the opinion that access to a national database should have no cost impact for local authorities.

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 would suggest that in addition to the proposed information, the following should be included: date of birth of the pedlar and where appropriate, details of any relevant offences. These details should include:

- Date of offence(s)
- Court
- Penalty imposed

We would also advocate the inclusion of details of any Simple or Conditional cautions issued against any pedlar.

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 would accept the findings of the Durham report that the number of pedlars who offer services only are very small. In this case, we would suggest that the removal of such traders from the certification scheme would have minimal impact.

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?

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

We would fully endorse the proposals for a change of criteria from that of “good character” to those suggested in the consultation which are based on previous conduct. This would provide a degree of consistency and transparency to the process of certification and would remedy the current problems identified in the Durham report in relation to the adequacy and variability of checks carried out by issuing Police forces. As an added benefit, the new criteria would be consistent

with those to be applied by Local Authorities in the licensing of street trading activity.

We would suggest that the conditions for issuing pedlars' certificates would be subject to the absence of any relevant previous convictions or other extenuating circumstances. Not only would this approach add clarity to the scheme but as such it would also promote consistency in the granting or refusing of applications. However, it is recognised that no system would completely remove local variation.

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 accept the view, as identified in the Durham report, that the current system of certification by the Police is inadequate since this leads to inconsistency in such issues as the nature and extent of checks carried out into the good character of applicants. We also accept there is some logic in transferring the responsibility for pedlar certification to those authorities that have adopted street trading licensing provisions under the Local Government (Miscellaneous Provisions) Act 1982 ("The Act"). This would create a uniform street trading regime. However, the same logic could not be applied to non-adoptive authorities, for which there is currently no incentive to regulate such trading activity.

In addition, we have several other concerns with the proposals. These are:

- Any transfer of responsibility will necessarily have a cost implication for local authorities associated with increased time in issuing certificates, dealing with enquiries about certified pedlars and defending any appeal against the issue of a certificate. There is also likely to be a cost incurred by each local authority associated with increased bureaucracy.
- The system of certification should, as mentioned previously, be supported by a national database. This leads to the question of which body would be responsible for maintaining such a data resource and how would data exchange between the national system and individual local authorities be executed?
- The current system enables the Police to access local records and the PNC in carrying out checks into the good character of applicants. If the responsibility for certification is transferred to local authorities then protocols for access to PNC would be required. The current experience of officers of Knowsley is that the willingness of the Police to share such information for enforcement purposes is very limited.

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?

We accept that the terms for refusal as outlined in the consultation would add consistency and transparency to the certification process and that the right of appeal would provide sufficient safe guards against abuse of the process.

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

As an authority which has adopted the provisions of the Act, Knowsley would see some merit in a consolidated street licensing regime thereby including pedlar certification.

The impact upon street trading in general would be dependant on any additional changes to the Act which we suggest would be required. This should include transfer and enhancement of enforcement of pedlar provisions to local authority officers. Such powers should include seizure of goods for evidential purposes and the ability of officers to issue fixed penalty notices for any breach of street trading provisions. We would also advocate the power of local authorities to require pedlars to obtain street trading licences under certain circumstances in response to local needs which can be readily justified. An example could be a requirement for pedlars to hold a certificate when trading in designated streets.

We would suggest that the impact of the proposals in the consultation and subject to our comments above would create a more uniform street trading environment in adoptive authorities. However, we foresee difficulties for non-adoptive authorities, for which street trading is of low impact currently, in accommodating the new responsibilities.

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

In order for the option to be viable, we would suggest that a full impact assessment on local authorities should be carried out. There will be obvious resource implications for all authorities but particularly so for those which currently do not adopt the Act.

We would suggest that a pedlar licensing regime should be self-financing and hence, analysis should be made as to the appropriate fees for such licences. There may also be a case for such a fee to be determined on a local basis.

Fundamental to the success of the option is the creation of a national database of pedlars to which local authorities have access. We have already outlined the issues associated with this in our previous responses.

There will also be a requirement for information sharing protocols between local authorities and the Police to be drafted.

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

We would suggest that the option to consolidate street trading under an amended Act would be an alternative as discussed in the consultation.

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

We would have strong reservations about the proposals to deregulate pedlar certification.

We would prefer the implementation of the alternative proposals in relation to updating the design and detail of pedlar certificates and the creation of uniform verification procedures. These measures should be in conjunction with the creation of a national database.

The proposals for a more rigorous certification process would reduce the likelihood of rogue traders engaging in pedlar activities and would thus afford some degree of protection to consumers.

Certification would also greatly assist officers tasked with the investigation of street trading offences by assisting in the identification of pedlars and in the issuing of fixed penalty notices.

Finally, we would suggest that de-regulation would create two-tiers of street trader in adoptive authorities i.e. those subject to licensing controls and pedlars. This situation, we would suggest, would be contrary to the principles of Better Regulation.

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

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.

We would support the Government's proposals for local authority enforcement officers to be given powers both to issue fixed penalty notices and to seize goods for evidential reasons.

We are in agreement with the findings of the Durham report which identified the resource implications for any local authority which institutes proceedings for street trading offences. We would also suggest that the limited powers available to local authority officers at the moment is a barrier to enforcement.

We consider that to increase the options that are available to local authorities to deal with breaches of legislation is entirely consistent with Hampton principles and the Better Regulation agenda. Indeed, Knowsley is already authorised officers to issue Fixed Penalty Notices in relation to environmental crime and smoke-free provisions.

The ability to seize goods would not only assist in the investigative process but may act as a deterrent to those engaging in illegal activity in certain situations.

Question 20: If you favour introducing new powers for local authority 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 believe in the principles of Better Regulation which promote a deal of flexibility in enforcing legislation and the availability of a range of sanctions to respond to misdemeanours. This approach is consistent with the authority's enforcement policy which aims to offer advice and education to traders that are in breach of legislation and thereby facilitate a fair and safe trading environment.

Indeed, Knowsley has long advocated the effectiveness of educational initiatives to promote responsible retailing. This is evidenced by the authority's *GET REAL!* campaign aimed at retailers of age restricted products. This is a multi-media resource which contained best practice information together with details of the legal obligations of sellers. This was complemented by the use of blue-tooth technology to focus key preventative messages to target groups such as youths gathering outside off-licence premises. These initiatives have borne fruit with a significant reduction in sales of age restricted products during test-purchasing exercises since the scheme was launched.

We are of the opinion that prosecution should only be considered in extreme cases when both the public interest and evidential criteria as contained in the *Code for Crown Prosecutors* are met. Such action is extremely resource intensive and invariably leads to costs awarded to prosecutors being less than the expense incurred in instituting proceedings.

To this end, Knowsley has introduced alternative enforcement strategies, which include the power of officers to issue Fixed Penalty Notices, in relation to environmental crime (such as littering and dog-fouling) and smoke-free enforcement. There are also likely to be developments in empowering Trading Standards Officers to issue Penalty Notices for Disorder in response to sales of alcohol to those under the age of 18 years. Thus, the proposals for empowering officers to issue Fixed Penalty Notices for street trading offences would be consistent with activity in other regulatory services.

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.

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

We are of the opinion that the list of offences on relation to Fixed Penalty Notices is adequate.

We have no strong opinion as to the level at which Notices should be set. However, it would appear logical that this is similar to the level assigned for environmental crime and smoke-free beaches.

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

Our experience in Knowsley is entirely consistent with the findings of the Durham report that certified pedlars are not the cause of significant enforcement issues. We therefore accept the Department's perceptions as detailed in the consultation in particular that diversity in trading practices should be promoted and that clarity and flexibility in enforcement of street trading provisions is the key to tackling unfair trading practices.

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.

We agree that a modernisation and clarification of the pedlary regime as outlined in the consultation together with the provision of additional powers to local authority enforcement officers should address many of the areas of concern in relation to the tackling of illegal street trading.

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.

We would not only agree with providing local authorities with the discretion under appropriate circumstances to limit the number of pedlars at specified times and/or in specified areas but that this discretion also be extended to the types of goods which can be sold by pedlars.

We are supportive of a proportionate approach to street trading and that the balance between protecting the economic environment of an area and the rights of pedlars to enjoy legitimate activity would be served by the proposals to limit the power of a local authority to remove pedlar exemption only under specific circumstances.

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?

As discussed above, we would suggest that a power to limit the type of goods sold under specific circumstances should be added to the list.

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

We would suggest that the proposals for local authority exemptions on pedlar activity to be regulated by means of the issuing of time limited licences should be the basis of further consultation and discussion particularly amongst those authorities in which the need for private legislation on street trading has been deemed necessary.

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 are not aware of any such evidence.

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.

We would welcome any guidelines that would assist in the interpretation of the legislation in relation to pedlars since this would be of benefit to both traders and enforcement officers and would be key to achieving a degree of uniformity of approach to street trading enforcement.

We would suggest that the guidance should be made available in various formats such as electronic, hard copy and copy for the visually impaired.

The check list would appear to be adequate and most importantly is consistent with the proposed legislative changes and current case law. It also allows for a degree of discretion amongst enforcement agencies (on issues such as trolley size) which is consistent with the findings of the Courts that each situation should be judged on its own particular circumstances.

In relation to format and wording, we would advocate a plain English approach which would minimise any ambiguities and would assist the target audience of street traders and enforcement officers.

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

LEEDS CITY COUNCIL

From: Marshall Gillian
Sent: 10 February 2010 10:36
To: streettradingandpedlaryconsultation@bsi.gsi.gov.uk
Subject: response to consultation

please find attached the response of Leeds City Council to the street trading and pedlary consultation

LEEDS CITY COUNCIL - RESPONSE TO CONSULTATION ON STREET TRADING AND PEDLARY.

Certification Process

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

Leeds City Council agrees that the current definition of a pedlar is outdated and needs updating and clarifying. It is partly for this reason that Leeds City Council is promoting private legislation on the issue.

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

Clarification is needed on the proposed definition. In particular, the issue of what is a 'reasonable distance' from the last sales position is likely to be problematic. We have examples of traders who either move very small distances or who move so slowly within a small area that the movement is almost imperceptible. Unless this is addressed the proposed changes will make very limited difference on the ground.

In relation to the proposal that traders should only pause to make a sale when trading, the Council considers this will make little difference. It is not the lack of clarity of definition that causes issues but the lack of clarity within case law. We have previously brought prosecutions based on traders who are standing still rather than moving, where not guilty pleas have been entered and where the defendants have been found not guilty on the basis that standing still does not negate operation under the pedlars certificate because it is reasonable for them not to start moving again immediately on concluding a sale. This means that a long observation or series of observations is required to ensure successful prosecutions.

The definition relating to means of transporting goods should be expanded to make it clear that the trolley etc should not be used for the purposes of display.

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 do not agree that a permitted size of trolley should be specified in the legislation.

What is appropriate in an area is dependant on the vicinity taking into account street width, footfall in the area and number of other traders.

However the definition of trolley should make it clear that what is intended is a means of transporting stock and so it should not include any display stands or appendages that could be used for display.

If a size is to be specified, Leeds would not support the 1m² trolley suggested as that would cause obstruction problems in our centre.

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

However we would favour instead a size limit based on the sort of small trolley cases that can be taken onto planes as hand luggage.

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 welcome the suggestion of updating and standardising the pedlars certificate as described. The lack of a standard form currently causes some difficulties. It is not easy to tell whether what is produced is genuine or not.

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 information should include date of birth as this is required by the Courts should enforcement be necessary.

Address details are useful but since these may change during the duration of the certificate it may be that this information should be on the national database rather than on the face of the certificate or there should be a requirement to notify any change of address to the database/issuing authority..

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

A national database would considerably improve the current system of enforcement and certification. However there are resource implications for both the creation and maintenance of the database including updating details and notifying prosecutions etc.

The Impact Assessment included within the consultation indicates that the cost of the database is likely to be recouped from an increased certificate fee. However we are concerned that the costs of creating the database have not been even estimated, the costs of maintaining the database have not been included in the assessment and it is unclear at what level the certificate fee would be set. Although pedlars responding to the Durham research were generally happy for the fee for the certificate to rise, both they and the Local authorities will need to know whether any such proposal will be based on a reasonable fee for the certificate or on the principle of full cost recovery.

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.

The date of birth of the certificate holder should be included with the information held for enforcement purposes. There should also be a requirement to notify the issuing authority of any changes e.g. to address details so that the database can be updated.

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.

We believe that the regulation of providers of services on the street is not incompatible with the Services Directive.

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?

Updating the definition relating to the grounds for refusal of a certificate is welcomed as part of the general updating of the legislation and will bring the tests more into line with other local authority licensing regimes.

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

In our view the proposed rewording will only lead to a more consistent approach to refusals of application if it is part of a package of measures including the transfer of responsibility for issuing the certificates moves from the police to the local authority. For example in two of the Leeds police divisions, the figures for 2009 show that one division received 32 applications for a certificate, refused 10 and granted 22 whilst the other also received 32 applications but only refused 1. That suggests that a different threshold is being applied between the two divisions. If the function transfers from the police to Local Authorities then it may also be useful to link with organisations such as LACORs who could offer guidance to council's on how to interpret the test.

In our area we don't currently require a police check before issuing street trading licences as many relevant matters are none-recordable and so would not show up. For that reason we would regard the proposed national database as being of high importance for determining the question.

We would also like to ensure that checks are done regarding the individuals ability to work in the UK. This could be 'other sufficient reason' but it may be useful to highlight that issue.

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.

In our view, transferring responsibility from the police to local authorities would be a good idea. Local authorities have experience of operating licensing and permitting regimes already and the system would be part of our 'core business' which it is not for the police. It would also help to promote consistency as evidence by the example given in answer to Q 11 which relates to 2 police divisions within our district.

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?

Our view is that clear terms for refusal with a right of appeal would be an adequate safeguard to ensure a fair and non- discriminatory regime,

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

See below

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

There would be a difficulty in maintaining the national ambit of certificates under the LG(MP) Act 1982 given the adoptive nature of the powers. Presumably those authorities who have not already adopted the powers have taken that position because there is no perceived need to do so in their area. That would be in line with the Durham research which found issues to be localised.

As Leeds has adopted the provisions we would have no difficulty in issuing certificates either under the Pedlars Acts or under the 1982 Act. Council's which have not adopted the powers may have a different view.

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

See below

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

This is the option currently being pursued within the Leeds City Council Bill as being a workable compromise which allows a national pedlars certificate to be used in Leeds but subject to conditions which meet the needs of our area.

In principle we would welcome the ability to exercise local control where necessary without the need for private legislation.

However the current proposals offer no detail as to the process that would be followed to ensure that restrictions could be put in place. Without this detail we cannot comment further.

Enforcement

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

Our preference would be for option D which gives a flexible enforcement regime and is similar to the regime in place for other local authority enforced offences. This is the option we are promoting in our current bill.

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.

We believe that Local Authority Enforcement Officers should have powers to issue FPNs and to seize goods. We have experience of operating both fixed penalty and seizure powers with no 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?

Our use of FPNs in relation to littering and dog fouling has proved particularly effective leading to increased cleanliness and public awareness and we have a developed process for following up unpaid FPNs which is an important part of a successful regime.

We see no reason why the use of FPNs for street trading offences (including acting outside the ambit of a pedlars certificate) would be different.

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 believe the list is complete and correct.

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

We believe that local authorities should have flexibility to set the levels to reflect local costs with either power for Parliament to intervene should levels be unreasonable or subject to a default level set in legislation.

This would be similar to other enforcement measures contained in the Clean neighbourhoods and Environment Act 2005.

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

We agree with the perception as set out.

In addition we would say that the public perception is that the Council is already responsible for traders in the street be they pedlars, licensed street traders or illegal traders. We receive complaints for the public about nuisance caused and about the standard of goods which include reference to the fact that the council 'allows' or permits' illegal activity or the sale of inferior goods. We need a clearer enforcement regime in order to address the issues raised by residents and visitors. Genuine pedlars whose details are known via a national certificate/database and who trade in line with their certificate are not the issue for either the public or for the Council.

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.

Such provision may address the concerns of some authorities but without draft legislation we cannot comment on whether it would address our local issues.

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.

See below

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?

See below

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

We do agree that in some circumstances restrictions can be justified for example at Christmas periods or other times of peak congestion such as Victorian or continental street markets in city and district centres. Whether they are required is also dependant on the physical size of the area e.g. width of the street and proximity of entrances to shops and not just footfall of shoppers. However the consultation document refers to areas of pedestrian congestion where street trading is already prohibited. In Leeds we designate all streets as consent streets. The only prohibited street is a private street accessing the city railway station. We would be concerned if the legislation were drafted in a way that would only allow us to impose restrictions where we already prohibit street trading.

We have concerns about how restrictions could be managed as identified in para 104 as such a system would be an administrative burden for local authorities as well as bringing great uncertainty for pedlars. For that reason restrictions relating to events and days and times may be so difficult to communicate that they would actually deter the genuine pedlar more than a blanket year round restriction for a particular area.

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.*

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.

We believe that the list is a mixture of legal requirements and guidance. It is not clear which items are legislative and which are not.

It would be useful if the 'do's' and 'don't's' were expressed in consistent language rather than using 'you must', 'you can', 'do not' and 'you should not'

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.

The guidance deals reasonably clearly with what is a complex subject matter but in the absence of clarification of what amounts to 'true pedlary' it remains complex and not particularly user friendly.

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.

LIVERPOOL CITY COUNCIL

Dear Sir / Madam,

The following is Liverpool City Council's response to the consultation document questions:

1. Yes.
2. The definition should specifically prevent the use of trolleys etc – in a pedestrianised City Centre environment allowing the use of trolleys just leads to a parade of overloaded cumbersome trolleys which can be dangerous to the visually impaired and young children as well as causing obstruction. In effect, allowing a trolley will just amount to giving carte blanche to mobile street trading stalls in City Centre streets which are either prohibited for street trading or have tightly regulated licensed pitches only. This was the position in Liverpool prior to the introduction of the Liverpool City Council Act 2006 which has been very successful in preventing this type of “back door” street trading.
3. Should not permit trolleys.
4. See answers to 3 and 4.
5. Yes
6. Date of birth should also be included.
7. Yes
8. Yes
9. No
10. Yes, the criteria should logically be the same as per LG(MP)A 1982 but there must be provision for obtaining CRB disclosures.
11. Yes
12. Yes, subject to fees being set at a level which ensures full cost recovery.
13. Yes
14. Liverpool has adopted Schedule 4 to the LG(MP)A 1982 so incorporating new pedlar provisions within it would not be a problem.
15. Yes
16. Don't know
17. No, too complicated
18. Liverpool already has power of seizure by officers and Court forfeiture orders by virtue of the Liverpool City Council Act 2006 which works very well. Therefore Option B (power to issue FPNs) would be the only additional power Liverpool would seek.
19. Yes

20. In Liverpool once the Liverpool City Council Act 2006 was passed, the pedlar fraternity quickly became aware that they risked seizure of goods if they were seen peddling in City Centre streets. This was a far greater deterrent than the risk of a small fine by the Court months down the line payable by instalments to suit them. Since the passing of the Act the incidence of peddling and general illegal street trading in Liverpool is now minimal.
21. The only current street trading offences under the LG(MP)A 1982 are specified in Paragraph 10(1) – it would seem appropriate for the power to issue FPN's to be applied to all these.
22. The FP should be fixed at a sufficiently high level to act as an effective deterrent – given they will be commercially motivated offences a £300 maximum is realistic.
23. The reality in Liverpool is that Pedlar Certificates, prior to the implementation of the Liverpool City Council Act 2006, were simply used as loophole to street trade in lucrative pedestrianised shopping areas without going through the process of obtaining licences or consents under the 1982 Act. It may be that in the shires there still exist pedlars that wander from town to town selling their wares but in a large city this is not the case.
24. No, in Liverpool some form of happy compromise would not be possible. The simplest and most effective solution is that which was implemented by the Liverpool City Council Act 2006. The City Council would strongly oppose any suggestion that the Liverpool City Council Act 2006 should be repealed – it was much needed, is highly effective and has greatly improved the public's experience of visiting Liverpool.
25. No, in Liverpool it would be over-complicated and unrealistic to apply restricted numbers and circumstances.
26. See response to 25 above.
27. See response to 25 above.
- 28 – 33. No comment.

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Solicitor
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LIVERPOOL CITY COUNCIL

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MAIDSTONE BOROUGH COUNCIL

Dear Deba Hussain or Roger Dennison

I attach for your attention Maidstone Borough Council's response to your consultation on the above.

In submitting its comments the Council wished to emphasise that any change made should not repeal or change any of the provisions of the Maidstone Borough Council Act 2006. The Act which allows pedlars to operate house to house and not operate in the streets thereby enabling the Council to control all street trading activities through its street trading policy unless the provisions of that Act becomes national legislation.

Thanking you for the opportunity to comment.

Yours sincerely

Neil Harris
Democratic Services Manager
Maidstone Borough Council

MAIDSTONE BOROUGH COUNCIL

STREET TRADING AND PEDLAR LAWS

RESPONSE TO QUESTIONS

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

Response 1:

Yes but the Council is of the view that all street trading should be administered through the street trading legislation.

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

Response 2:

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.

Response 3:

No comment

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

Response 4:

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.

Response 5:

Yes as there would be clear information that could be easily checked and verified.

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.

Response 6:

Yes

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

Response 7:

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.

Response 8:

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.

Response 9:

No comment

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?

Response 10:

Yes

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

Response 11:

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.

Response 12:

Street trading would be best administered through local authorities though only if there was a national database and that the scheme including the database was properly either by central government or through fees so that there was no cost to the Council.

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?

Response 13:

No comment

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

Response 14:

No comment

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

Response 15:

No comment

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

Response 16:

No comment

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

Response 17:

No comment

Enforcement

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

Response 18:

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.

Response 19:

Yes as this will lead to swifter enforcement, less waste of court time and less cost to both the local authority and the courts.

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

Response 20:

Enforcement response is delayed and increased costs to local authorities from court action can lead to no action being taken.

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.

Response 21:

Yes

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

Response 22:

£200

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

Response 23:

No as the Council feels that any change should not repeal or change any of the provisions of the Maidstone Borough Council Act 2006 which allows pedlars to operate house to house but not in the streets thereby enabling the Council to control all street trading activities through its street trading policy unless the provisions of the Act become national legislation. The Council feels that it is better that all street trading is controlled through the street trading legislation which allows greater control over enforcement.

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.

Response 24:

See response to 23

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.

Response 25:

The Council's view is that all street trading should be administered through the street trading legislation

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?

Response 26:

See response to 25

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

Response 27:

See response to 25

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.

Response 28:

No comment

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.*

Response 29:

No comment

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.

Response 30:

No comment

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.

Response 31:

No comment

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.

Response 32:

No comment

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.

Response 33:

No comment

MANCHESTER CITY COUNCIL

Dear Ms Hussain/Mr Dennison
please find attached our response to the consultation on street trading and pedlars reform

Regards
Fiona Sharkey

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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?

The list is too vague and does not clarify what a pedlar must or must not do. We would prefer objective criteria to be adopted.

For example, the concepts of “reasonable distance” and a “small means of transporting goods” are unhelpful, as what is reasonable to one person may not be to another.

Such ambiguity will lead to inconsistencies in approach across the country – something which is already acknowledged elsewhere in the consultation document to be a problem under the current regime.

The lack of objective criteria will not address problems relating to enforcement, and would lead to a further wave of case law in order to clarify the definition.

Criteria such as the maximum period of time the holder of a pedlar's certificate can stay in one place; the minimum distance to be moved by the holder of the pedlar's certificate after the expiry of that time; and the maximum size of any means of transporting goods would provide transparent and measurable criteria, and remove subjective views which would differ from officer to officer and town to town.

If the list was to be retained in its current form (which is not our preferred option) there is substantial overlap between the 2nd, 3rd and 4th bullet points which makes the list confusing.

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 the use of trolleys is to be permitted, their carrying capacity should not exceed 1 cubic metre, to reduce the risk of such trolleys causing obstructions to pedestrians.

As in our answer to question 2, prescribing a maximum size would provide transparent and measurable criteria.

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

As in our answer to question 2, the criteria should prescribe matters including the maximum period of time the holder of a pedlar's certificate can stay in one place; the minimum distance to be moved by the holder of the pedlar's certificate after the expiry of that time and a prohibition on returning to within a prescribed distance of any of his previous trading positions.

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.

Under the current system there is wide variance in appearance of pedlar's certificates depending on which police force has issued the certificate. Such inconsistencies provide difficulties for enforcement officers in identifying legitimate certificates.

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.

It would be desirable for the date of birth of the holder of the pedlar's certificate to be included, to facilitate checks on holders of certificates across local authority departments. Courts are also increasingly asking for such information when commencing a prosecution in order to facilitate their recovery of fines and costs upon conviction.

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

Yes.

It will enable enforcement officers to make quicker checks on an individual, as well as providing a reliable source to establish the validity or otherwise of a certificate presented to them

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 desirable for the date of birth of an applicant for a pedlar's certificate to be included, which would facilitate checks on applicants across local authority departments. Courts are also increasingly asking for such information when commencing a prosecution in order to facilitate their recovery of fines and costs upon conviction.

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.

Yes.

Providers of services can cause as many issues for local authorities as providers of goods. For example, poor workmanship and obstruction are common. Traceability of the supplier of goods is therefore crucial.

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?

No.

There is the same degree of ambiguity attached to the proposed new requirement as there is to the current one.

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

No.

What may be deemed to be a “sufficient reason” to refuse in one local authority area may not be a “sufficient reason” in another. Determining what is a “sufficient reason” will therefore be a matter of local policy for each local authority with the resultant variations and inconsistency across the 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.

However as a pedlar’s certificate is valid nationally there is little justification for it to continue to be issued on a local level with local policies, therefore an alternative option could be for such responsibility to be transferred to a national body such as the SIA.

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?

If the terms for refusal were clear, then yes, however as per the answer to question 11, “sufficient reason” is vague and provides little certainty for applicants.

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

Our views are neutral.

It will have little effect which legislative regime the certificates are actually issued under as it is the criteria contained in whichever legislative vehicle is used, as well as local policies which will have most effect.

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?

Certificates could be issued by a national body, such as the SIA, which would give national consistency to the administration of a certificate which would be valid nationally.

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

This is our least favoured option. There appears to be no mechanism proposed for vetting people who wish to trade in this manner before they begin trading, the benefits of a simple identification system expounded elsewhere in the consultation would be lost, and this proposal would be logistically extremely difficult to enforce.

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.

Fixed penalty notices would provide a further, lighter touch option to dealing with offenders rather than the rather stark options of either doing nothing or prosecuting every case and would therefore be desirable.

Seizure of goods (and equipment) would provide a valuable deterrent effect and, if complemented with powers of the Courts to award compensation in cases where seizure is unlawful, would provide a balanced, proportionate means of addressing the issue without having to rely on partners in the police to use their powers of seizure under section 19 of the Police and Criminal Evidence Act 1984 (as is currently the case).

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?

Please see answer to question 19. Additional powers would free up police resources to tackle more pressing issues. It may be useful to create an additional offence of obstructing an authorised officer, or requiring a suspect to provide their name and address upon demand, which is something that is common throughout much of local authority enforcement legislation.

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.

£100 (if paid within 14 days) £150-200 (if paid within 28 days). The level should be fixed at a higher rate than some other fixed penalty regimes (for example, littering) as there is a commercial aspect to pedlary which would require a higher level to ensure a deterrent effect.

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

No.

The problem is not those pedlars who trade within the terms of the Pedlars' Act. The problem is that in order to prove that someone is acting outside those terms, that a disproportionate amount of enforcement officer time and resources such as CCTV has to be spent in order to gather the necessary evidence to put before a Court.

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.

In part, yes.

However, in the absence of a mechanism to control the numbers of pedlars who can operate in an area at any given time, there will always be an element of unfair competition due to the relatively inexpensive less onerous means by which a pedlar's certificate can be obtained, when compared to the substantially higher prices and more onerous conditions of street trading licences. This is especially so when pedlars can trade in exactly the same location as street traders selling exactly the same goods at a fraction of the overheads.

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 essential that a mechanism is found to allow this to happen, for example at "pinch points" in City centres such as where pedestrianised streets meet streets with traffic on, or at events which attract huge numbers of people (such as football matches) large numbers of pedlars can cause obstruction and enforcement difficulties.

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?

Broadly, yes.

However the list needs to be drawn widely enough to allow for all local circumstances to be taken into account as there are many variables across the many diverse towns and cities across the country.

The list should also make provision for large concert venues, such as the Manchester Evening News Arena, which regularly holds large scale concerts, but would not fall easily within any of the circumstances as currently proposed.

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.

We do not feel in a position to comment on this aspect of the consultation.

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.

The City Council is currently promoting a private Act of Parliament and has provided evidence of problems associated with service providers to Select Committees in both Houses.

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.

No.

The guidance does not deal with "legal street selling" (which includes pedlars, street traders with licences and consents, and (in areas where street trading is

not regulated) any individual with or without an authorisation who chooses to trade there).

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

Whilst “rider” on the guidance clearly states that it is for the Courts to decide there is a danger that, by providing such guidance it will become taken by Courts as more than that. The correct way to clarify what a pedlar can and cannot do would be to prescribe, in primary legislation, the precise activities that pedlary comprises (including exactly how long a pedlar could remain in one area).

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.

No, for the reasons given in the answer to question 30.

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 do not believe this is a matter for which guidance is appropriate. The matter should be dealt with in primary legislation to clear up any ambiguity, thus providing consistency across the country.

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.

MEDWAY COUNCIL

Contact Name: Mark Lawson
Your ref:
Our ref:
Date: 11th February 2010

*Received
17/2/10*



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Dear Sirs,

Street Trading and Pedlar Laws

Please find enclosed a response to the above-mentioned consultation on behalf of Medway Council. I hope that you find it useful and that you take our thoughts into consideration when making any decision.

Should you need any further information or wish to put any further questions, please do not hesitate to contact me.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Andy McGrath', is written over a light blue horizontal line.

Andy McGrath
Assistant Director (Front Line Services)

This letter is available in larger print size if required. Please

Response to Street Trading and Pedlary Consultation.

Q1 Yes

Q2 The condition that a pedlar should not sell hot food should be added to the list of definitions. The reason for this is that in order to prepare food such as burgers and hot dogs prior to having made a sale, a trader cannot avoid being stationary.

The traders shown here were operating with a pedlars certificate but remained stationary. They were prosecuted for illegal street trading under the Local Government (Miscellaneous Provisions) Act at magistrate's court. It took a considerable amount of officer time to gather the necessary evidence to bring this prosecution. However, they were acquitted, their defence being that they had to prepare the burgers and could not do so while moving.

This had the effect of giving these traders free reign to operate as a street trader rather than a pedlar, with no regulation from the local authority. It was for this reason more than any other that Medway Council decided to sponsor a private bill through parliament which enabled it to control this activity and take enforcement action where appropriate.



Q3 A trolley should be no bigger than a shopping trolley or a pram. Traders would then cause no more obstruction than other shoppers. The trolley should primarily be for the purpose of transporting goods rather than displaying them.

Some examples of inappropriate trolleys used by pedlars are shown below



- Q4 We have no alternative suggestions at this time.
- Q5 Having a standardised certificate for pedlars would of course make identification easier for enforcement officers, especially if a photograph was included. Currently, officers are presented with a hand written paper certificate which is usually well worn, folded and dog eared, issued by a police station hundreds of miles away.
- These documents (if genuine) have a written description of the holder but as these descriptions are often quite generic, e.g.: white, male 5'9" brown hair, it is easy for people to falsely trade on someone else's certificate. This in turn makes prosecution difficult. A photograph would remove this difficulty and significantly decrease the opportunity for illegal trading by posing as someone else.
- Q6 It seems obvious but the certificate should include the holder's name and date of birth. This information is essential in any level of enforcement.
- Q7 In conjunction with Q5 above, the ability to quickly and easily check the authenticity of a pedlars certificate will be an asset to enforcement officers and pedlars alike.
- Q8 The database should include the same photograph of the holder as is displayed on the certificate. This will deter traders from tampering with the certificate.
- Q9 No this Authority would not support the re-introduction of certification for pedlars as service providers as it would require the creation and implementation of procedures to administer certification where there would appear to be only a very small number of potential applicants.
- Q10 The proposed criteria are helpful in respect of previous convictions being taken into account. However, vague terminology such as "*..or for any other reason*" cannot possibly offer greater clarity as to what is expected of a pedlar in terms of their suitability to hold a certificate.

It is important to note at this point, that street trading offences are not recordable offences. As such, no records of street trading or pedlar convictions are held on the Police National Computer. It is conceivable therefore that enquiries with the PNC could show an applicant to be of unblemished character, while in reality, he has street trading convictions in magistrate's courts across the land.

As far as we are aware, there is no method of searching magistrate's court's records to check if an applicant has relevant convictions.

However, an applicant could be asked to declare previous convictions. Although this is obviously open to abuse, it could be made clear that making a false declaration would lead to him/her being banned from holding a pedlars certificate.

There could also be a page on the national database where local authorities could record convictions against pedlars. However, this could not be done retrospectively because of the reasons outlined above.

- Q11 If the criteria are clear and are published with unambiguous guidelines, then reasons for refusal should be consistent across the country.
- Q12 The logic of transferring responsibility for issuing pedlars certificates to local authorities seems obvious. However, it must be recognised that this will draw on resources that are already stretched. Just as the police wish to use the valuable time spent on pedlars certificates to deliver on their other objectives, it must be taken into account that absorbing this burden will have a negative impact on the delivery of local authority objectives.

Neither can it be assumed that this function is no different to those already carried out with regard to street trading licences. Currently, Medway Council operates a "consent" system under the Local Government (Miscellaneous Provisions) Act 1982. There is no requirement under this system to carry out checks with the police as there is under the license system. Applications are made and processed by post. The team carrying out this function are not in a customer facing office.

In order to be able to issue pedlars certificates, the team would need to be able to meet the applicant at a customer facing office with the facility to take their photograph and print it onto the approved format, having carried out the necessary identity checks and criminal record checks. Having done this, they would then need to update the proposed national database.

It is clear that the implementation of this policy would introduce new working practices and procedures. While we agree with the principle of taking responsibility for the issuing of pedlars certificates, we would be

cautious about accepting any new obligations that would take resources from an already stretched service, especially in the current economic situation. We would also point out that it is our belief that this function although the responsibility of the police, is carried out by civilian staff and does not take up the time of police officers.

- Q13 We believe that there are sufficient safeguards to ensure that the certification regime is fair and non discriminatory. However, it should be noted once again that under Medway Council's street trading consent system, there is no appeal process. The introduction of such a process with regard to pedlars certificates will place yet another burden on resources and will have a negative impact on the delivery of other services.

- Q14 If the provisions of the Pedlars Act were incorporated into the Local Government (Miscellaneous Provisions) Act, would pedlars be restricted to "consent" streets in the same way as other traders? Or would the designation of streets under the act not apply to them? If not, what would be the advantage of repealing the Pedlars Act?

Local Authorities would still be obliged to certificate pedlars, make criminal records checks and update the national database. It seems to matter little under which legislation they are obliged.

- Q15 This option could be viable if it gave local authorities additional controls over where pedlars traded (not withstanding the resource implications outlined above). However, bearing in mind the national nature of a pedlars certificate, the list of prohibited streets would be very long indeed. Significant work would be required to include this list on the online register.

- Q16 We are not aware of other ways of maintaining national access to pedlar certificates.

- Q17 This option is in our opinion unworkable. If pedlars are not required to obtain a certificate, enforcement officers have no means of identifying them should their trading activity prove it necessary.

Although this option takes away the administrative burden, enforcing against traders with no means of identification would prove impossible and would undoubtedly result in council officers calling on the assistance of the police in removing these people.

- Q18 Option D would seem to be the most appropriate option as it gives enforcement officers two levels of response depending on the nature and individual circumstances of the offence.

- Q19 i) The ability to issue fixed penalty notices for street trading and pedlar offences will allow officers to deal with offences quickly and easily. In most cases this will prevent low level cases from taking up

court time. However, prosecution must follow where a fixed penalty notice remains unpaid.

ii) The ability to seize goods with forfeiture by court order allows enforcement officers the ability to take a more robust course of action in cases where a street trader or pedlar persists in committing an offence having been warned or having accepted a fixed penalty notice but continues to trade.

Q20 This authority supports the use of fixed penalty notices for lesser offences and has found them to be effective in changing the behaviour of offenders. Following the introduction of the Clean Neighbourhoods and Environment Act 2005, Medway Council adopted the relevant FPN powers. After a period of publicity around litter offences, we commenced enforcement. Two Litter Enforcement Officers were employed for this purpose and they were issuing on average 12 FPNs per day.

The Litter Enforcement Team has since been dissolved and the responsibility for FPNs taken on by the Safer Communities Team, of whom there are 25. Although there is still litter on the streets, such has been the change in behaviour that these 25 officers issue on average 16 FPNs per month.

This authority already has the power to seize goods under the Medway Council Act 2004. As well as the street trader and pedlar applications, this has been very effective in controlling the activities of those offering vehicles for sale on the highway. This was a problem about which we received many complaints, particularly from residents living on major thoroughfares where parking is at a premium. These sites were particularly attractive to car sellers because of the high volume of motorists that would see their vehicle for sale. Often, residents found themselves unable to park in their own street because the spaces were taken up by several vehicles being advertised for sale, the owners of which were not local to that street.

The ability to seize these vehicles (following service of notice) and the publicity surrounding it has had a direct impact on the behaviour of those wishing to advertise vehicles for sale on the highway. This activity is now governed by consent and has led to an improvement in the quality of life of those affected by it.

Q21 The list of street trading offences should include consent offences as well as licence offences.

The list of pedlar offences should include failing to act as a pedlar as outlined in the terms of the certificate and the definition in the Act. I.e. trading from the same spot or near to the same spot, remaining stationary between sales, using an oversized trolley etc.

Medway Council

- Q22 Fixed penalty levels should be set at a sufficient level so as to be an effective deterrent. A £50 FPN for example is unlikely to deter a trader who may expect to make £600 - £800 per day. Whereas if the penalty were set at £300, a trader might consider the risk more carefully before embarking on the enterprise. In short, this is a commercial crime and should attract a commercial penalty.
- Q23 We do not agree that the proposed changes would enable enforcement officers to deal effectively with illegal street traders. Updating the terminology of the act and having a more robust certification and identification system is laudable, but these issues have never been the real problem.

The real issue is that in order to prove that a legally certificated pedlar is acting as a street trader (and is therefore committing an offence) an enforcement officer would still have to spend an inordinate amount of time making observations as to his/her activities. I.e.; the amount of time spent stationary between sales, times and locations of sales. Previous experience shows that these observations need to be made over at least two hours in order for a magistrate to convict.

Many local authorities and established businesses share the same belief that the Pedlars Act is an outdated piece of legislation and that the mode of service provided by pedlars is not serving the needs of modern society. In fact, the act has been open to unregulated abuse by unscrupulous street traders who have been allowed for many years to trade under the guise of being pedlars but in fact are offering a different service which requires them to remain static for long periods and on many occasions, this has been at the expense of an established tax paying business who would have difficulty competing pricewise on a like for like basis. It is difficult to percieve, in the present trading environment, what type of service could legitimately be regarded as truly qualifying for a Pedlars Certificate that would provide an 'on-street' service and would be popular with today's discerning public, whilst sitting comfortably alongside legitimate established businesses.

Legislation intervenes to make sure goods offered for sale are safe and of satisfactory quality. There is no redress if the seller cannot be traced by the consumer.

- Q24 We do not agree that, if provision was made for more enforcement options against illegal street trading and a sufficient demarcation between legitimate pedlary and other street trading was established, this would address the issues of concern to local authorities in relation to unfair trading and competition.

In our opinion, this would place an even greater burden on existing enforcement resources, to monitor 2 sets of rules and would still be open to question in terms of interpretation without the introduction of 'simple to understand' guidelines which need support from the Police

Medway Council

and Magistrates. There needs to be a clear statement as to what would qualify for a pedlars license, as opposed to any other type of street trading, together with an explanation of which practices would qualify to avoid any confusion or accusations of discriminating between these practices.

The introduction of such measures would make enforcement more complex than already exists and would not be in keeping with reducing levels of bureaucracy and would be in contradiction of business and public opinion and the principles of reducing legislation on legitimate businesses.

Q25 Yes

Q26 Yes

Q27 Applications for a restricted number of day licences for events or festivals could be made via the national website on a first come first served basis. These applications could be made in advance for events which are advertised on the website.

Enforcement officers would then have a list of what pedlars to expect on the day. This would make the removal of unauthorised pedlars easier, but as outlined in Q23 above, there is still the issue of whether or not the pedlar is acting as a street trader.

Q28 We agree that appeals in London should be heard by the Magistrate's Court and not the Secretary of State. This is not only more proportionate but also ensures consistency across the country.

Q29 This Authority is not aware of any evidence to contradict these conclusions

MID LoTHIAN COUNCIL

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.

Answer: Yes

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

Answer: 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

Answer: It should be of manageable size and reasonable proportions ie comfortably able to be handled by one person.

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

Answer:

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.

Answer: Clear concise description. Identification with photograph visible on person of pedlar.

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.

Answer: Care should be taken to ensure that personal details are not revealed i.e. NI No. Address, date of birth which if revealed may place the pedlar at risk. (The ID badge should contain enough information to verify personification).

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

Answer: 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.

Answer: Add Date and Place of Birth, maiden name and convictions ie as in Civic Government legislation

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.

Answer: There is no evidence to suggest that they should be abolished. There was no consultation beforehand. There is no longer any provision for itinerant 'traders' of this nature. Abolition does not sit easily with the protection of the Human Rights of Pedlars in this activity.

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?

Answer: Yes. Provided the inbuilt protection ./ provision for the fit and proper test in consultation with the Police who must continue to be involved in the processing of applications ie as in Civic Government legislation.

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

Answer: 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.

Answer: Yes - Greater accountability, Corporate Democratic Approach, but there is no real evidence to prove that it is needed.

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?

Answer: Yes i.e. as in Civic Government legislation.

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

Answer: The latter will require 'itinerant' trader's licences or one for each area they trade in. Itinerant trading is a new concept and one which will require careful consideration eg street traders do not currently enjoy the facility of being able to trade in local government areas where they are not licensed. .

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

Answer: Yes – i.e. as in itinerant metal dealers but here too there have been difficulties in establishing whether a licence is held. Consultation is a must.

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

Answer: Maybe through the Police National Computer as this is accessed in assessing the past criminal activity of applicants for licences – the fit and proper test.

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

Answer: Not favoured owing to lack of ability to control activity and confusion as to those involved in the activity.

Enforcement

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

Answer: B but not all LA's have enforcement officers.
A cheapest but ignores the need to revise the legislation.
Option D only relates to England and Wales.

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

issue fixed penalty notices - Yes

seize goods, with forfeiture by order of the Court? - Yes

Please give reasons for your answer.

Answer: To remove nuisance, reflect Trading Standards Powers, ensure speedy action and act as a 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?

Answer: There is no evidence. Answer based on experience of the application of regulatory controls.

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.

Answer: Making false declarations, failure to keep details up to date, advise of material change. (There may be no need to include reference to lending or borrowing certificates as it is an offence to trade without a certificate.)

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

Answer: At a level that reflects Civic Government Penalties ie proportionate and reasonable.

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

Answer: Yes. Pedlars can cause nuisance. (However, the majority of peddling activity will take place in Housing Estates as the person travels to trade and therefore really should not impact on shopping centres.)

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.

Answer: 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.

Answer: 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?

Answer: 1 Yes 2 No 3 No

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

Answer: No. Clearly it will be difficult. The concept of temporary pedlars certificates for as short a period as a day is discussed. Here, the demarcation between Peddling and Street Trading becomes even less distinct.

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.
Services Directive

Answer: N/A

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.*

Answer: In respect of traders in services, consideration may need to be given to the repeal of S39(2) (b) of the Civic Government (Scotland) act 1982. Clarification should be provided. For the sake of clarity all round, an attempt should be made to define any regulations under which control is (and can be) exercised on the activity. Further guidance is required on the rationale behind the application of the directive.

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.

Answer: 1 Yes 2 No

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.

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.

Answer: 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.

Answer: None

MILTON KEYNES COUNCIL



Deba Hussain
The Consumer and Competition
Policy Directorate
The Department for Business,
Innovation & Skills
Bay 416, 1 Victoria Street
London SW1H 0ET

Brian Sandom
Corporate Director Environment

Phil Winsor
Assistant Director Regulatory Services

Our Ref: EH/EF/gt

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8th February 2010

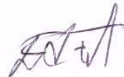
Dear Sirs

Re: Consultation on Modernising Street Trading and the Peddler Legislation

On behalf of Milton Keynes Council, I write in response to your consultation and hope that you find this Authority's comments useful.

I have set out my consultation responses as answers to the questions directly raised and hope this is satisfactory. If you have any queries, then please do not hesitate to contact me.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Ed Fisher'.

Ed Fisher
Licensing Officer
Milton Keynes Council

Enc

CONSULTATION RESPONSES

1. **Do you agree that the Pedlars' definition is in need of updating and clarifying?**

Yes, this Authority agrees.

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

This Authority believes the issue of reasonable distance between sales positions needs clarifying and the new definitions as proposed do not stop peddlers moving back and forth between 2 spots that are almost next to each other in order to get round legislative definition. We would guard against use of the word 'should' as this leads to ambiguity. "Must" avoid standing still between sales when trading would be better.

3. **Do you think the permitted size of a trolley should be set out in a definition?**

There needs to be clarification if a "display" on a trolley is allowed as Pedlars normally use their trolley for this purpose. We would suggest one option in terms of the size of a trolley is to revert to the existing definition in the Local Government Miscellaneous Provisions Act in respect of newspaper vendors. This lists a maximum size of 1 metre by 2 metres high with a ground cover area no greater than 0.25 metres squared. Whether this would be large enough for a Pedlar is debateable but a permitted size should be set out legally

4. **Do you have any alternative suggestions?**

No

5. **In your view will updating the certificate as described above make verification and identification of lawful peddlers easier?**

Yes. This Authority does believe this to be the case. A photograph and National Insurance number could be helpful.



6. **In your view, is the list of information to be included in a modified certificate complete?**

No criticism of list proposed

7. **Do you think that a National database of peddler certificates will improve the current system of enforcement and certification?**

Yes

8. **Do you agree that the list of information to be held on the database is complete and correct?**

Yes, the Authority does agree that this list is a good start but would recommend that any such database also detailed if a peddler had been issued with warnings or had received complaints about his operation as these could be valid issues to consider when dealing with 'renewal' of certificates.

9. **With reference to section 6 of this document, would you support the reintroduction of certification for peddler service providers?**

This Authority has no view on this matter.

10. **Do you think the proposed criteria will offer greater clarity of what is expected?**

Yes

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

Possibly but what would be necessary was very clear and robust guidance for authorities to adhere to, otherwise there will be a wide range of attitudes taken by the various Local Authorities across the Country, which may lead to more inconsistency as opposed to greater consistency.

- 12. In your view should responsibility for issuing peddler certificates be transferred from police to Local Authorities?**

Probably yes. The police seem to have little knowledge, understanding, or will to deal with this matter in our experience within Milton Keynes and Local Authority input could lead to better control of the industry.

- 13. Do you think that clear terms for refusal of applications in the legislation, coupled with right of appeal, are sufficient safeguards to ensure a fair and non discriminatory certification regime?**

Yes, although we would recommend that there was a requirement in any licensing system by Local Authorities for them to consult with the police.

- 14. What are your views on the above opinion.....?**

As long the legislative regime is well drafted this option is a workable option

- 15. With further work, do you think this option is viable?**

Yes.

- 16. Are there any other ways of maintaining the national access to peddler's certificates other than under the Peddler's Act?**

Do not understand the question

- 17. What are your views on the above option?**

We have concerns that if we pursue this element as suggested it would lead to difficulties for pedlars in respect of different approaches by different councils across the Country. In addition, we have concerns that the lack of a certificate system could lead to more abuse of the privilege and it is hard to see how a non licence system would allow a pedlar's history to be taken into account when you were dealing with them.

18. Which of the above options do you favour?

Option D.

19. Should Local Authority Enforcement Officers be given powers to issue fixed penalty notices and seize goods?

Yes. This is because it is difficult dealing with Pedlars on the ground on enforcement, and it would be beneficial to be able to issue a fixed penalty notice there and then.

20. If you favour introducing new powers for Local Authority Enforcement Officers, can you provide evidence to support this view?

In the experience of this Authority, prosecution of individuals who are street trading is a very difficult business that is not supported by the Courts in terms of the fines awarded. For example a conditional discharge is often sentenced in Court even when there is overwhelming evidence of multiple offences having been committed. In terms of pedlars this would be difficult as they tend to move on to another Authority quickly without repeat offences being recorded.

The cost of prosecutions and the fines awarded to Councils in our enforcement activity do not reflect the effort and time involved in taking the matter to Court.

21. Is the list of offences in respect of FPN's complete and correct?

Yes but clarification needs to be provided in respect of street trading 'consent' as opposed to street trading licence. Breach of either should be covered in the FPN regime.

22. At what levels do you think the fixed penalty should be set?

Matters should be dealt with in line with other fixed penalty notices for other similar offences presumably within the region of £50 to £300.

23. Do you agree with the department's general perception?

Yes

24. Do you agree that if provision for more enforcement options against illegal street trading.....was established, that this would address the issues of concern to some Local Authorities?

Yes, probably.

25. Do you agree that in some circumstances restrictions on the number of legitimate peddlers in specified areas is justifiable?

Yes

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?

No, we do not disagree with any of the listed circumstances.

27. Do you have any observations in relation to the ideas aired in the final paragraph?

Yes in general. Other issues to consider on a local level would be the number of persons attending the local events referred to as well as the topography and layout of an area.

28. Should street trading appeals in London be determined by the Magistrates Court.

Yes. Magistrates Court

29. If you are aware of any evidence to suggest the conclusions set out above do not reflect the actual position, please provide it.

None

30. Is the check list at the front of the guidance an adequate one page summary?

We would recommend that the guidance is made clearer. The word "should" is inadvisable as it encourages ambiguity. In addition, the word "large" should have better definition.

31. Do you think the draft guidance meets the need of the target audience?

The guidance fails to deal with the issue of traders who refuse to move on quoting various case law that allows them to stand in one place for up to 15 minutes. Greater clarity on this would be welcome as this is a particularly difficult issue to deal with on the ground. In addition, we also have a problem with traders who tend to simply move from one spot to another spot and then back again (often reluctantly), with both pitches being a few yards apart. Both these issues are detailed on page 82 of the consultation as problems that everyone has to deal with yet they are missing from your guidance.

32. Do you have any suggestions for amendments to the guidance?

See above. Also, size of barrows, stalls or trolleys should be something that the guidance deals with as well as additional information on the difference between "display" and storage. We are aware that the Local Government Miscellaneous Provisions Act already provides an example trolley size in respect of newspaper vendors of 1 metre by 2 metres high with a ground for an area no greater than 0.25 metres squared. This could provide a template to work on although it may be considered smaller than some trolleys currently deemed acceptable.

33. If you have any other comments or observations, in particular information on possible costs, we are happy to receive them as well.

The start-up costs of the proposed legislative change are likely to be more considerable than the document outlines. It is accepted that £100 application fee may well cover this but there will be a need to obtain and implement computer software to deal with the matter as well as an appropriate method of printing issued licenses. It may well be that the system employed under the Licensing Act for personal licenses could provide a template for this matter, with plastic credit card type licenses issued with a photo embossed on them. These they would have a greater useful life as they are more robust than paper copies.



We would also draw to your attention the issue of individuals working for another. It will probably be necessary for every person working a trolley to have their own pedlar's licence.

N.E LINCOLNSHIRE COUNCIL

To whom it may concern please find below, response to above consultation.
Regards Sue Burns

- Q.1 Yes
- Q.2. Must not use a stall
- Q.3. No would be too complicated to effectively enforce
- Q.4. No
- Q.5. Yes, agree with paragraphs 57-59 of consultation
- Q.6. Yes
- Q.7. Yes
- Q.8. Yes
- Q.9. Yes
- Q.10 Yes
- Q.11 Possibly
- Q.12. Yes but not valid across the UK only for issuing Authority area to provide local control
- Q.13. Yes
- Q.14 We would welcome the rationisation under the Local Government (Miscellaneous Provisions) Act 1982 without the need for adoption, but would prefer local control (see Q.12)
- Q.15. Yes but is not our area of expertise
- Q.16. No
- Q.17. We would prefer the previous options for enforcement purposes
- Q.18. Option D and seizure powers
- Q.19. Yes provides immediate action
- Q.20. Yes Trading Standards Officers have dealt with counterfeit goods
- Q.21. yes
- Q.22. see paragraph 91
- Q.23. Yes
- Q.24. Yes
- Q.25. Yes
- Q.26. Yes
- Q.27. No
- Q.28 N/A
- Q.29.
- Q.30. Yes
- Q.31. Yes
- Q.32. No
- Q.33 No further comments

Sue Burns
Senior Licensing Enforcement Officer
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NORTH NORFOLK DISTRICT COUNCIL

Question 1.

Yes it does, but the whole package of Pedlar/Hawker and Street Trader needs looking at, and simplifying into one definition and class of trader.

Question 2.

As this act as with its colleague the vagrancy act was initiated to control itinerant movement of soldiers returning from the Napoleonic Wars, it should be updated significantly.

It also has to be brought up to the 21st century, for example, an elderly person using a mobility scooter, could not be a pedlar. These are used more and more frequently, and the drivers do everything on them from shopping to walking the dog.

The door to door salesman is now a thing of the past, and even rag and bone men are now using vans instead of Horse and Carts.

The Question has to be is the current legislation fit for purpose.

Question 3

If we follow from question 2 the size of trolley is immaterial. Items offered for sale in this day and age are frequently larger than previous years, and to be honest most of the applications received here are for ice cream and hot dog type sales, which need more than a trolley.

Question 4

The alternative suggestion is to rescind these acts and put together an act which can allow people to trade without a shop, and to specify the actions they take, and the cost of doing so. This cannot be done without consultation with the retail trade. It also may seem an inappropriate time to be doing this allowing for the number of unemployed people.

Question 5

We come back to the value of the personal/national ID card, any licence today should be durable and have a photograph of the holder on it. It should be national, and not parochial. It would benefit from a central national database. But yes it would be very helpful to enforcement officers in town centres, or anywhere else they need to inspect and verify a persons legality.

Question 6.

Yes, every document issued by central or local government should include the national insurance number of the bearer. I agree entirely with the list.

Question 7

Yes. It will be the back up proof to the produced licence/certificate.

Question 8

Agreed.

Question 9.

I believe that not only are the terms Pedlar, Hawker and Street trader are now old fashioned and out of step with the present times. I also believe that the activities undertaken by these people, have changed considerably. Further that there may well be many fewer than in the past, and that many will be restricted to certain areas.

It is therefore more important that we seek a current and modern system and a term of reference and conditions which reflect today's Pedlar.

Question 10

Surely the matter of a fit and proper person will arise from the applicants CRB check. They could also be listed as exemptions from the Rehabilitation of offenders act.

Question 11.

Hopefully yes.

Question 12.

If we remain in the same area of Pedlar/Hawker/Street Trader, then yes better that it be under one roof, of course the Police could take on Street traders.

Question 13.

Yes, basically it allows the applicant to weigh up there options and the likelihood of a refusal.

Question 14.

We are now moving in the right way, to include Pedlar in the LG(MP)Act, and to review and renew the definition, to remove the blurred edges and have one licence for all itinerant street trading would be a good thing. It would also give the traditional shop keeper an update on the grounds for competition.

Question 15.

The option is viable, and appears to me to be the natural way to go. It minimises the number of licences which can be issued, (Cuts down on workload) { Necessary as my council is looking at a 16% reduction of workforce}

Question 16.

Yes, it does not matter who issues it, it can be done through a central computer and then be accessible to all.

Question 17.

A reasonable option, the removal of pedlars, and incorporating that traditional tasks in street trading regulations, however it introduces clouds, better to remove the lot and start again.

Question 18

Option B, my second option D, would again involve councils in expense which would have to be borne by tax payers.

Question 19,

1 Definitely YES.

11. Only if absolutely no cost to council.

Question 20

I do support the new powers, but I have only in the last 10 years dealt with one pedlar, and he had a licence, people have approached questioning the ability to street trade, and not followed through. Therefore I cannot support my yes with evidence.

Question 21.

I think so.

Question 22

No less than £100. This is a statement that the person has done wrong, covers costs of observations, and officer time, may take time to pay and will have certainly taken time to earn.

Question 23

Yes

Question 24

I have no evidence to support or deny this question, but I do believe that the concept of penalties to be imposed, will work on the applicant and the general traders in equal measures.

Question 25.

If you permit one pedlar or street trader you must permit any number.

Question 26.

Again, we do not have numerous pedlars or street traders so I cannot quantify an answer.

Question 27.

I feel that any system in place will not consider the needs of the applicant, nor those of the resident shop keepers, it is best to issue a licence, and let the pedlar decide when they want to trade.

Question28

I have no idea,

Question 29.

Question 30

Yes It covers all the do's and don'ts

Question 31

Yes it is simple and well laid out, contains all the contentious points in easy to read and understand bites.

Question 32

No

Question 33.

The only suggestion is that we have one act, specifying exactly what cannot or can be done.
Otherwise, we move in the right direction.
The idea of pedlars moving to local authority control is sound.

Hope this is OK.

Merry Christmas

Tony Gent

North Norfolk District Council is working to Keep Norfolk Local. For more information visit www.keepnorfolklocal.com

NORTH SOMERSET COUNCIL

Dear Sirs,

Please find attached the response from North Somerset Council.

Regards,

Keith Taylor
Licensing Manager

Tel: 01934 426 323

Warne Road Depot, Warne Road, Weston-super-Mare, BS23 3ND

Response from North Somerset Council re consultation on modernising Street Trading and Pedlars Legislation

Number	Question	Response
1	Do you agree that the definition is in need of updating and clarifying? If not, please provide your reasons.	Yes.
2	Do you think anything should be taken out or added to the list and why?	No.
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 – the term “small means” is vague and difficult to interpret and enforce. By defining a maximum size both Pedlars and Enforcement Officers would have clarity. Size – maximum 1.5m length
4	Do you have alternative suggestions? Please provide them.	No.
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. Reasons – agree with comments made in paragraphs 57/58.
6	In your view, is the list of information to be included in a modified certificate complete? If not, please state what	No – should include Date of Birth for identification purposes. Otherwise agree with the list.

Number	Question	Response
	information you believe should be added/removed and why.	
7	Do you think that a national database of pedlars' certificates will improve the current system of enforcement and certification?	Yes.
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.
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.	Yes. If exemptions are given then there is scope for abuse. By requiring all "Pedlars" to be licensed there will be a level playing field and not a two tier system.
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.
11	Do you think the proposed criteria will lead to a more consistent approach to refusal of applications from issuing authorities?	Yes.
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 – If certificates were issued by Local Authorities then one agency would be responsible for all street trading activities (administration and enforcement).
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.
14	What are your views on the above option, and how this might affect street trading or pedlar activity?	Agree – amalgamation of the pedlars and street trading under one Act would be more effective and easier to administer.

Number	Question	Response
15	With further work, do you think this option is viable? Please give reasons for your answer.	Yes – will have to consider removing the discretionary element of adopting the street trading provisions under the 1982 Act.
16	Are there other ways of maintaining the national access to pedlar certificates other than under the Pedlars Act ?	Not under the current regime.
17	What are your views on the above option? Please give reasons for your answer.	Strongly disagree – the proposal would create inconsistencies of approach/reduce consumer recourse accessibility/would be unable to differentiate between legitimate pedlars and unscrupulous traders.
18	Which of the above options do you favour?	Option D – provide LA Enforcement Officers with powers to issue FPNs and seizure of goods.
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 to both questions – agree with statements made in paragraphs 88/89.
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 experience a large influx of pedlars (200+) for the annual carnival in Weston-super-Mare each year. Regularly we find persons attempting to trade without certificates. Having stronger, more immediate powers plus being able to enforce the legislation ourselves would make enforcement more effective.
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 – but terminology for the street trading offences needs clarifying i.e. street trading consents AND licences.
22	At what levels do you think the fixed penalties should be set? Please give reasons for your answer.	Agree the penalty should be between £100 - £300 i.e. it has to reflect the earning potential of the traders and be a sufficiently strong enough deterrent. Recommend £200.

Number	Question	Response
23	Do you agree with the Department's general perception, as set out above? If not, please explain.	Yes.
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.
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 – strongly agree.
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.
27	Do you have any observations in relation to the ideas aired in the final paragraph above on methodology and notice?	Agree that determination of the level of restrictions to be applied should be a local decision as circumstances can vary and local knowledge would be required. Disagree with the concept of issuing “day licences” on the actual day – this would be difficult to support/resource. This could be resolved by having on-line application processes.
28	Should street trading appeals in London be determined by the Magistrates' Court or the Secretary of State? Please give	Magistrates' Court so that a consistent approach is taken nationally.

Number	Question	Response
	reasons for your answer.	
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. <i>Note that a pedlar of goods and services will need to be certified in order to trade as a pedlar of goods.</i>	Whilst it is agreed that the number of Pedlars providing the traditional services is now low, other services such as hair braiding/temporary tattoos is very common. For the reasons of consistency all peddling activities should be brought “in scope”. If exemptions are made there is potential for “loopholes” being created thus making enforcement more difficult.
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.
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.
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.
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.	<ol style="list-style-type: none"> 1. Establishing a national database for legitimate pedlars is a good idea, but is it achievable? We are still waiting for a national database for Personal Licence Holders under the Licensing Act 2003. 2. There is no mention in the consultation paper regarding how persons moving addresses will be recorded. Our experience is that this often happens and thus making it difficult to

Number	Question	Response
		<p>trace individuals.</p> <p>3. We would prefer a mandatory requirement in law for an individual who makes an application for a Pedlars Certificate or Street Trading Licence/Consent to have a criminal records check done as part of the application process.</p> <p>4. There should be included within the legislation a requirement to pay renewal fees within a set period of time e.g. one month. If the fees are not paid, then the Certificate/Licence is cancelled. This process is present in the Gambling Act 2005 and works well and reduces the administrative burden regarding fee collection.</p>

NOTTINGHAM CITY COUNCIL

Hi

I'm not sure whether you will have received the email below - there seems to have been a problem with the email address. I hope that this message gets through okay.

Regards,

Neil Ehrhart
Markets and Fairs Service Manager

Markets and Fairs Service, Community and Culture
Markets Office, Glasshouse Street, Nottingham, NG1 3LP

Tel: 0115 91 56970 Fax: 0115 91 56973

Email: neil.ehrhart@nottinghamcity.gov.uk

Victoria Centre Market, Nottingham - Midlands winner of the NMTF's Greenest Market 2009
Victoria Centre Market, Nottingham - Midlands winner of the NMTF's Greenest Market 2008

NOTTINGHAM CITY COUNCIL'S RESPONSE TO:

STREET TRADING AND PEDLAR LAWS

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

This is Nottingham City Council's response to the consultation document, above. If you require any clarification on the response or any further detail, please contact the Markets and Fairs Manager; Neil Ehrhart, at the Markets Office, Glasshouse Street, Nottingham, NG1 3LP. Email: neil.ehrhart@nottinghamcity.gov.uk or Phone: (0115) 915 6970.

4 CERTIFICATION PROCESS

4.1 Definition of a pedlar

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

- Yes. It is clear that the existing definition of a pedlar in the Pedlars Act 1871 does not describe a kind of trading that is recognised today. Many people are trying to claim exemption from the street trading legislation in the Local Government (Miscellaneous Provisions) Act 1982 by defining themselves as a pedlar but behaving quite differently. The exemption applies to trading by a person acting as a pedlar under the authority of a pedlar's certificate. So, whilst the certification process is important the behaviour of the pedlar also requires definition.

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

- 'Must be a pedestrian' should only refer to whilst the pedlar is trading – there shouldn't be an expectation that a pedlar is required to walk from town to town
- 'Must move around to trade' could result in traders walking up and down the same stretch of pavement or round in circles.
- 'reasonable distance from their last sales position' is a very broad definition and open to interpretation. This may allow a pedlar to walk just a metre, stop for a 'potential' sale and then return to their original position.
- 'Should avoid standing still' implies that there is a measure of discretion here. Could this be amended to 'Must avoid standing still'?
- 'Should only pause *sufficiently long enough* to make a sale when trading'
- The definition of transporting goods by means of a trolley should specifically exclude the exposure of goods for sale from the trolley.
- We believe that pedlars should not be able to sell similar goods to another outlet within a certain distance. This can cause considerable conflict with existing retailers.

4.2 The Pedlars' Certificate

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 the trolley size should be defined, we would suggest that it should be no larger than 500mm wide and 500mm deep and no higher than 1000mm.

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

- See response to Question 2.

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. We have witnessed a number of different formats containing varying degrees of information, which isn't helpful. We have even witnessed pedlars possessing two certificates in different formats issued by different Police Authorities but running concurrently.

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.

- There should be a requirement for a pedlar to carry proof of public liability insurance as required by all our street traders and market

traders. If the pedlar is acting for a company they should also carry a copy of the Employers Liability Insurance certificate.

- Consideration should be given to recording the details of goods sold by the pedlar.

4.3 National Database of Pedlars

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

- Yes. However, it is not clear who will hold this information and what the Data Protection implications are. There is an acknowledgement that the cost should be recouped through the certificate fees but there is no indication what the cost will be. We believe different authorities will have different costs. Do you expect a national fee or will this be able to fixed locally?

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.

- As per question 6, we believe that insurance details and goods sold should also be recorded on the database.
- What type of offences would be included on the database? We would advocate that any breaches of Street Trading, Consumer Protection and Trading Standards legislation should be included on the database.

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.

- There could be a potential problem with henna tattooists and hair braiders that are selling a product and then providing a service. It would not be difficult for the product to be 'given away' with the paid for service provision thereby circumventing the need for a pedlars certificate. Similarly, are Roadside Assistance organisations selling a product (membership) or supplying a breakdown service? It is for this reason that Nottingham would like service providers included in the legislation.

4.4 Grant of Certificate – “person of good character”

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

4.5 Issuing Authority for Pedlar's Certificates

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, assuming that this will be at district and unitary authority level as these Councils already have expertise in licensing matters.

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?

- The proposals would align the pedlar regime with the street trading regime, which seems to operate effectively and ensures a high quality of trader. However, as identified later, not all authorities have adopted the LG(MP)A provisions and they may have less knowledge of the issues and this could cause resource issues in terms of recruitment and training.

4.6 Other options or possible outcomes in the light of establishing the shape of a future regime

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

- As there is so much similarity between street trading and pedlary it seems the best option to deal with both activities in the same legislation. However the LG(MP)A is adoptive so the certification of pedlars would have to be compulsory if the residency qualification for pedlars is maintained.

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

- The exemption in the LG(MP)A for pedlars would need to be deleted.
- Authorities that have adopted the LG(MP)A provisions make an assessment of their local area and will designate their streets as either consent, licence or prohibited streets dependant on local conditions. It seems anomalous for a local authority to decide that a street must be prohibited for street trading purposes but is then powerless to prevent a pedlar trading there. Peddling should be limited to consent, licence or unadopted streets only. However, this should be limited in terms of numbers on a particular day. In Nottingham organised teams of pedlars will arrive in a number of vehicles and saturate one or two streets with up to twelve pedlars, many of whom act in groups of three or four. Clearly this can still have a significant impact on consent, licence and unadopted streets.

- There is a question about the fee for issuing a certificate. The fee would need to at least cover the costs of issuing the certificate and enforcing the legislation. However, this will vary considerably from authority to authority particularly as some authorities are already set up to deal with this but others, who haven't adopted the provisions will have to start from scratch.

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

- See above.

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

- In effect this would remove all controls for pedlars. This would be a rogue's charter allowing anybody to trade anywhere with virtual impunity. Where would the protection be for the consumer and the traceability for HMRC, DWP and other statutory bodies? Whereas this proposal does allow local authorities to exercise restrictions in some geographical areas how could this be enforced without determining the identity of the offender?

5. ENFORCEMENT

5.1 Enforcement options for street trading and pedlary offences

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.

- Under the existing regime the length of time between the date of offence and date of hearing in the Courts can be up to six months (see paragraph 9.2 of Appendix A). The levels of fines and costs imposed by the Court are derisive and considered an inconvenience to offenders rather than a deterrent. We are therefore in favour of powers to issue FPNs and seize goods.

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?

- Nottingham City Council are promoting a private Bill to amend section 3 and schedule 4 of the LG(MP)A as it relates to street trading. The evidence for the Bill, which was presented to the

House of Commons Unopposed Bills Committee, is attached at Appendix A for information.

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 advocating that the Pedlars Act be repealed and pedlars be dealt with under a revised LG(MP)A or similar. With this in mind we would like powers to issue FPNs and/or seize goods (with forfeiture) for committing any offence under the legislation.

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

- Clause 13 of our private Bill provides that the Council must fix the levels of fixed penalties. In doing so the Council must have regard to the reasonable costs incurred by them in administering the street trading regime and the costs of enforcing the provisions of schedule 4 of the LG(MP)A and that the level of FPN must be published in a local newspaper.

5.2 Power to impose local restrictions on certified pedlar activities

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

- Whilst we would largely agree with the statements made about unfair competition, this is not the only impact that pedlars have on the environment of the City. Street trading can provide diversity and consumer choice and enhance the character and ambience of the environment. However, the aesthetic of the stalls and the range of goods sold need to be controlled to ensure that the offer meets the demands of a modern vibrant City Centre. Unfortunately the lack of effective control of pedlars' activities means that we are faced with shoddy goods and dangerous trollies on the streets of Nottingham which adversely affects the visitor experience.

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.

- Certainly our experience of promoting a private Bill is expensive and time consuming and it is our understanding that a number of local authorities experiencing similar problems are deterred by the procedure and would welcome some local determination along the lines being considered. However, in Nottingham we still intend to pursue the Nottingham City Council Bill.

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.

- As explained earlier there are often teams of organised ‘pedlars’ that attend Nottingham. We can experience up to twelve pedlars selling the same items in groups of three or four. This is in addition to numbers of individual pedlars trading independently and others coming to the City to benefit from events and activities. Whilst a limit on numbers may seem reasonable it is difficult to see how this could be measured, communicated and enforced.
- The issuing of day licences or consents is a system that we have already implemented for street entertainers and could be extended to pedlars, however in itself this would not deter the illegal itinerant trader.

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?

- In response to question 15 we have already stated that peddling should not be permitted on streets designated as prohibited under the LG(MP)A.
- We would add concerts and theatre performances, charitable, social and cultural events to the list of exceptional circumstances.

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

- It would appear that you are proposing issuing a limited number of pedlars’ licences or permits during these restricted periods.
- Initially you would have to determine what scrutiny would be applied to the justification of exceptional circumstances otherwise every local authority experiencing a problem will restrict numbers. Who would scrutinise the exceptional circumstances and where would the appeal process lie?
- How would the numbers of pedlars be determined and how would the ‘day licences’ be allocated? First come, first served? If pedlars did not attend by reason of weather, etc. could their licences be reallocated? Could this be determined on goods sold?
- It appears that an extra licence or permit would be required which would represent a cost to the licensing authority. How would this be recovered?

Paragraph 105

- It is not clear yet that any new provisions will have the same effect as provisions in private Acts. These Acts have been justified through Parliament under intense scrutiny and should not be repealed unless by agreement with the relevant authorities.

5.3 Final point of appeal for Street Trading Appeals (London only)

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.

- This does not apply to Nottingham

6. 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.

- There are many organisations that promote their services on the street. This includes energy suppliers, breakdown assistance suppliers, broadband providers, etc. These do not purport to be pedlars and are not selling articles so do not come under the definition of street trading in the LG(MP)A either. However, they still have a detrimental impact on the street and the visitor experience.
- The Nottingham City Council Bill extends the definition of street trading to include 'the supplying of or offering to supply any service in a street for gain or reward'.
- As highlighted in question 9 there is a concern that some traders offering goods and services will provide the goods for free and charge for their service thereby circumventing the proposals.

7. 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.

- The format of the checklist does not accurately reflect the complexity of the situation. Whilst a simple approach is preferable it does not make any reference to the detail contained in the full guidance document. The fear is that the checklist will be read and quoted in isolation which could lead to further conflict.
- We tend to make reference to the tests established in the Chichester District Council v Wood case and may be a better model for distinguishing a pedlar from a street trader than the checklist.
- The checklist should also make reference to those areas that have private Acts.

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.

- The draft guidance is a well researched document that reflects the current situation. However, we are not convinced that the document could be used to explain to an illegal street trader why enforcement action is being considered.

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 document would need to be no more than four pages and written in clear language. Many of our illegal traders are foreign nationals with only limited English and may have difficulty understanding some of the terminology.

8. GENERAL COMMENTS

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.

NOTTINGHAM CITY COUNCIL BILL

NEIL EHRHART

MARKETS AND FAIRS SERVICE MANAGER

PROOF OF EVIDENCE TO UNOPPOSED BILLS COMMITTEE

PREAMBLE

I am Neil Ehrhart and since April 1997 I have been employed as the Markets and Fairs Service Manager, within the Cultural Services Section of Nottingham City Council. Prior to working at Nottingham, and since 1980, I have had experience in managing markets, fairs and street trading for the local authorities in Derby, Wrexham and Mansfield.

I have responsibility for the retail markets operated by the Council and licence all privately operated markets within the common law distance of Nottingham's Markets. I manage the annual Nottingham Goose Fair and licence pleasure fairs in the district. I also have responsibility for street trading within Nottingham.

Having read the University of Durham report on Street Trading and Pedlary in Great Britain, I note the contents but do not share all the views or findings expressed.

TYPE OF AREA

Nottingham is the regional capital of the East Midlands and with its excellent transport links to all major cities and Europe, it is at the forefront of business, science, development and is one of the UK's core cities.

Greater Nottingham has a population in excess of 630,000. Nottingham is home to two leading universities, creating a very large student population.

The city centre is a major retail centre which has continued its high ranking position both within the UK and the region, placing the City's retail offer in sixth position behind London's West End, Glasgow, Birmingham Manchester and Liverpool.

There has been recent growth in the city centre retail sector with the opening of new developments and more to come, including the major redevelopment of the Broadmarsh (Westfield) Shopping Centre helping to consolidate Nottingham's position as one of the top retail destinations in the country.

In the public realm, there have been many improvements, the most significant being the Old Market Square in the heart of the city centre. Following two years of development, a new very large civic space has been created, now being used for events throughout the year increasing the visitor numbers to the city centre. Events have included live music shows, Gamecity, Christmas and German craft markets, a large outdoor ice rink over the Christmas period, plus regular fine food markets. During the summer months the square's water feature has been very popular with visitors and this year we are holding the Nottingham Riviera event during the schools' summer break that will result in an increase in the number of visitors with the attractions of a beach, promenade and seaside entertainment all within the square.

A new £13 million Centre for Contemporary Arts, designed by internationally renowned architects Caruso St. John, is currently under construction within the city centre and is due to open in the autumn of 2009.

STREET TRADING

The Council obtained the Nottingham City Council Act 1976 to regulate Street trading in the City Centre. In 1991 the Council adopted schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 ("The 1982 Act") to regulate street trading in some of the shopping districts within the Authority's boundary.

In 1997 all street trading pitches operating under the 1976 Act were changed to the 1982 Act and streets in the City Centre were designated either as licensed streets or prohibited streets. In 2005 all licence streets were re-designated as consent streets as this makes it easier for the Council to manage the street trading pitches.

Consent streets are where street trading is permitted, subject to a consent being issued by the local authority. Fixed street trading pitches have been established having due regard to consultations with the Police Authority, Fire Service, Highways Authority, City Centre Management, the Access Officer, local retailers, local residents and local Councillors. There are 45 street trading pitches in the City Centre and a further 19 pitches within the district.

The fees currently levied for consent holders range between £1,775 and £7,657 per annum dependant on pitch size, location and range of goods.

In Nottingham a number of people attempt to claim exemption from the 1982 Act by trading as pedlars with valid Pedlar's Certificates. However, the exemption only applies where a person also acts as a pedlar. When they do not act as a pedlar they then infringe the provisions of the 1982 Act.

PEDLARS ACTS 1871 AND 1881

Pedlars' certificates are currently granted by the Chief Officer of Police for the district in which the applicant has resided for at least one month prior to their application.

Provided the officer is satisfied that an individual is over 17 years of age, appears to be a person of good character and in good faith, intends to carry on the trade of a Pedlar, a certificate shall be issued. Whilst the Police do carry out the relevant checks by means of their local and Police National Computer, which is a relatively simple procedure, obtaining information on foreign and E.E.C. nationals is more difficult and requires protracted enquiries. Also, offences against the 1982 Act are not recorded on the Police National Computer so will not appear when undertaking a background check.

The current cost of obtaining a pedlar's certificate is £12.25, which is valid for one year. A pedlar's certificate, once issued, can then be used to trade in any part of the country, subject to any local conditions, and not just within the district or borough in which it is issued.

There is currently no prescribed form for a Pedlar's Certificate and the quality of them has been found to be inconsistent between the different issuing Police Authorities. For example, some contain photographs of the certificate holder, however many do not and simply contain a brief description of the holder, together with an address the applicant used at the time of the application.

It is, therefore, relatively straightforward and inexpensive to acquire a pedlar's certificate, with little or no scrutiny of applicants by the police. Pedlars certificates are not subject to conditions and are only able to be revoked by a court following a conviction for an offence. The system in its current form gives the Local Authority no control over the number of Pedlars who may wish to trade in the town, what they sell, nor where they sell it.

A pedlar is any hawker, pedlar, pretty chapman, tinker, caster of metals, mender of chairs or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot, and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares or merchandise or procuring orders for goods, wares or merchandise immediately to be delivered, or selling or offering for sale their skill in handicraft.

In 1956, the High Court held in *Sample – v – Hulme* (3 ALL ER 447n, 120JP 564) that persons who travelled from town to town by conveyance and then walked from house to house, were travelling on foot and were therefore pedlars.

In 1996, Lord Justice Leggatt held in the case of Stevenage Borough Council –v- Wright, (Times Law report 10 April 1996); that “essentially, a pedlar, acting as such, is travelling when he is not trading. So the length is important of those periods during which he is stationary and not selling but is prepared to do so. The use of a stall or stand may indicate an intention to remain in one place or in a succession of different places for longer than necessary to effect a particular sale or sales”.

By definition, a pedlar is not permitted to set up a pitch and allow customers to come to them instead they should be on the move. A pedlar should not have a stationary stall, and should not stop other than whilst making a sale to a customer. The significance of a pedlar moving about is relevant, in that if they are not seeking the attention of potential customers they do not fall within the definition of a pedlar, and, therefore, should not use a pedlar’s certificate in an attempt to take themselves outside of the street trading regime.

In relation to the Nottingham City Council Bill, the Council seeks to amend the exemption for pedlars in the 1982 Act because the majority of traders with Pedlars’ Certificates who visit Nottingham do not behave as pedlars and seek to claim the exemption in the 1982 Act under false pretences. The typical trader will arrive in a van, unload all their stock on to relatively large trolleys and set up in the pedestrianised areas of the City Centre. Rather than act as pedlars the traders will then remain stationery for long periods of time causing obstruction to shops, authorised vehicles, the public and other users of the highway. It is my experience that they only start to move when being observed by a known or uniformed Council Officer.

OFFERING OF OR OFFERING TO PURCHASE TICKETS

Nottingham has a high student population from the two Universities in the area. Due to the profile of the population there are several concert and theatre venues that attract major national and international shows and artists. Venues include Rock City, the Royal Theatre, the Royal Centre and the Nottingham Arena. The Arena is also a major sporting venue, often hosting the National Ice Hockey play off finals. Trent Bridge Cricket Ground and Nottingham Forest Football Club are located just outside the authority’s boundary but when major events are held at these venues Nottingham City is the arrival point.

The Nottingham City Council Bill seeks to extend the definition of street trading to include the purchasing of tickets on the street to protect consumers from unscrupulous sellers.

SUPPLYING OR OFFERING OF SERVICES

Under the provisions of the 1982 Act, street trading is defined as 'the selling or exposing or offering for sale of any article'. The Act is silent on other trading activities on the street.

It is quite common to have representatives setting up stands selling membership packs to motoring organisations. There are also organisations that send representatives to Nottingham to encourage people to switch energy suppliers or set up home visits to sell home improvement products, etc. In recent times I have also noticed a number of businesses selling discount tickets on the street to be redeemed at a later time or date against products such as beauty treatments, cheap drinks, etc.

All these activities are completely unregulated. The Nottingham City Council Bill seeks to extend the definition of street trading to include services so that these activities can be controlled.

BACKGROUND TO PROMOTION OF LOCAL LEGISLATION

Nottingham City Council promoted a private Bill in 2003 to deal with the registration of second-hand goods dealers in the city of Nottingham; the control of occasional sales; and squat trading in the city. At the time consideration was given whether to include provisions to deal with illegal street traders, however, there was insufficient evidence that this posed a problem at the time to warrant the additional powers.

Over the past three years there has been a marked increase in the number of unauthorised traders in the City Centre all year round. Activity can be seasonal with a large influx of traders during the school holidays and in the Christmas period. There are usually a number of traders that visit Nottingham selling merchandise relating to special events such as concerts, performances and sporting events. However, it is exceedingly rare to walk through the City Centre and not come across unauthorised trading activity and this will usually be the result of poor weather.

Unauthorised traders operate throughout the City Centre. The main concentrations being:

- *Clumber Street*
- *Lister Gate and Albert Street*
- *St Peter's Square*
- *High Street, Long Row and Smithy Row*
- *Streets surrounding performance and sporting venues.*

MERCHANDISE ON OFFER

There is a collection of photographs submitted as evidence that demonstrates the range of goods that have been offered for sale in Nottingham over the last two years.

PASHMINAS

Pashminas have been the most frequently occurring product on sale in Nottingham. The sellers seem to be well organised with up to six or eight sellers arriving in the City in a large van. After offloading their trolleys and merchandise the sellers will then split up and relocate with at least two trolleys positioned on the same street, often in close proximity to each other. Some of the pictures submitted as evidence demonstrate them standing close to each other, often in an 'L' configuration but also in series and in parallel. The sellers work together and will often tend two trolleys at a time. The sellers are usually Israeli nationals and, in speaking with them, they are recruited to work in Britain for two or three months at a time. The sellers are usually charming and are quite happy to have their photographs taken with their trolleys and their pedlar's certificates. Some sellers return each year.

PED EGGS

This commodity removes rough skin from feet. Over the last six months it has become the second most frequent product being offered for sale.

FLAGS, SCARVES AND SPORTING MEMORABILIA

These traders usually have trolleys that have quite a small footprint, maybe about a square metre. However, the goods are then cantilevered off the trolley and are built perhaps 4 or 5 metres high. Examples are shown in the submitted photographs.

TOYS, BALLOONS AND NOVELTY ITEMS

Toys and novelty items are offered for sale all year round. The particular items will depend on the latest craze and have included remote control helicopters and cars, 'splatt' balls, bubble swords and guns, puppets, dolls, soft toys, etc. Of most concern are products offered for sale that I refer to as flashers. These are dummies, mouth guards, sticks, etc. that glow in the dark or flash multi colours. Many of these have been the subject of Trading Standards alerts and are removed from sale if stocked by any traders on our markets, street trading pitches or fairs. Normally these sellers attend in the evenings and sell to people attending concerts, clubs and the pantomime.

JEWELLERY

These traders usually trade from quite a small footprint of less than a square metre. Their stalls consist of folding display cases that can be carried around as an authentic pedlar may do, however, more often than not they are rested on a fold away stand in a stationary position. When left to their own devices they will trade in this manner however, when approached they can quickly pack away the stand and move along.

WIRE OBJECTS/ORNAMENTS

These traders usually carry a roll of soft metal rods, which depending on what they are asked to make, they cut to the required length and bend into shape. The problem is that to make the shape or object requested, they need to remain stationary and preferably have the use of a table or piece of street furniture in order to assist them in producing the item, as well as exhibiting various pre shaped items. When checked, the traders indicate that they don't understand what is being asked of them. However, when challenged they can usually produce a valid pedlar's certificate.

HOUSEHOLD TEXTILES

These traders usually sell bedding, quilts and towels. These are quite bulky items and to sell the volumes required to make sufficient money the trolleys employed are usually large. The evidential pictures show products being merchandised in wheeled cages, often with a footprint of less than a square metre, but with very high displays or shelves cantilevered off the cage.

SEASONAL ITEMS

These are opportunistic sales, designed to benefit from a particular day or season and to take profits from well established businesses. The photographs contain evidence of Mothers Day cards, sunglasses, wooden roses but it can be almost any product and certainly includes Christmas wrapping paper, decorations and hats. With the Nottingham Riviera planned this summer we can anticipate beach balls, buckets and spades, sun hats, etc.

PROSECUTIONS

As mentioned at paragraph 6.2 there has been an increase in the level of illegal street trading in Nottingham over the last three years. This was first recorded in the period in the run up to Christmas 2006. Since then a number of cases have been pursued through the courts and a summary of the outcomes is given below.

Date of Offence	Date of hearing	Fine	Legal Costs	Victim Surcharge	Means of Disposal
11/11/2006	02/04/2007	£180.00	£180.00	£0.00	Guilty in absence
18/11/2006	02/04/2007	£120.00	£120.00	£0.00	Guilty by post
18/11/2006	02/04/2007	£120.00	£120.00	£0.00	Guilty by post
20/04/2007	02/07/2007	£75.00	£63.33	£5.00	Guilty by post
18/05/2007	02/07/2007	£75.00	£63.33	£5.00	Guilty by post
22/05/2007	02/07/2007	£75.00	£63.33	£5.00	Guilty by post
09/11/2007	25/02/2008	£250.00	£100.00	£15.00	Proved in absence
09/11/2007	25/02/2008	£170.00	£100.00	£15.00	Guilty by post
10/06/2008	20/10/2008	£250.00	£161.00	£15.00	Pleaded guilty in person
10/06/2008	03/12/2008	£350.00	£161.00	£15.00	Guilty by post

One of the interesting points highlighted by the table is the length of time from the date of the offence to the date of the hearing. This varies from between six weeks to six months, often dependant on the ability to actually serve the court summons, due to the difficulty in obtaining accurate details. In this period the trader invariably continues to trade and in six of the above cases the traders have returned to trade in Nottingham; in one case on the day after the hearing. The level of fines and costs awarded may be a factor in the lack of a deterrent.

Since 2006 we have tried several different approaches to the problem from educating illegal traders, serving warning letters, overt and covert surveillance, poster and signage campaigns and compiling civil cases. All have proved to be ineffective in resolving the problem, hence the promotion of the Nottingham City Council Bill.

In taking enforcement action I am now concentrating on taking more criminal cases. Enforcement action takes the form of the following procedure.

STAGE ONE

A trader may be spotted and reported by a Council Officer, a CCTV operator, a Community Protection Officer (CPO), a shopkeeper or a member of the public. The case is reported to the Community Protection Team who will dispatch an Officer.

STAGE TWO

The CPO will observe the trader's activity to determine whether the trader is acting as a pedlar or an illegal street trader. The CPO will then approach the trader and request identification. If the trader has a valid pedlar's certificate and is acting as a pedlar, no further action is required. If the trader either does not produce a pedlar's certificate or is not trading as a pedlar the CPO will issue a Letter

Before Action. The CPO will advise the trader why he has been issued with a letter and advise him that they will continue to be observed and monitored. If the CPO considers that they are illegally trading enforcement action may be taken against them. The CPO will then complete a statement of the observations, the issue of the Letter before Action and the conversation.

STAGE THREE

If a trader that has been issued with a Letter Before Action is observed trading in Nottingham a CPO will observe and monitor his actions. If the trader's actions are considered to be illegal street trading, the CPO will approach the trader again and inform him that he has been observed to be trading illegally and that a case file will be prepared for a criminal prosecution. The CPO will then complete a statement of the observations.

STAGE FOUR

The Community Protection Team will prepare a case file with supporting statements and, if available, photographic and CCTV evidence for submission to my team, the Markets and Fairs Service. On receipt of the case file, and if there is sufficient evidence, my team will prepare a prosecution report for the Legal Team. The Legal Team review the prosecution and a summons is applied for at the Magistrates Court.

STAGE FIVE

If the traders is still active a papers will be served personally on the street. However, if the papers cannot be served they will be sent to the last known address. Cases are then heard at the Magistrates Court.

The table at paragraph 8.2 summarises the cases that have been heard in the Magistrates Court, all of which have lead to successful prosecutions. However, it does not make any reference to all the cases that have been aborted before a hearing. This is usually attributable to the inability to serve the summons. The nature of this type of trading is itinerant so by the time the summons is ready, the trader may have ceased to trade in Nottingham and may not return for several months, if at all. As I have stated at paragraph 7.3, many of the foreign nationals trade for a short period of time and do not return. This also causes a problem when sending Summons to a given address. They are often returned unopened, marked 'Gone away' or 'Not known at this address'.

At the moment, our Legal Team have applied to the Court for three summonses and my team are referring a further four cases to Legal. It is not clear how many of the summonses will be served.