APPENDIX B

Department for Business, Innovation & Skills

Consultation Response form for England and Wales ONLY

Consultation on Street Trading and Pedlary Laws – Compliance with the requirements of the European Services Directive

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is **15 February 2013.**

Name: Robin Thomaides
Organisation (if applicable): Liverpool City Council
Address: Liverpool City Council, Room 220, Municipal Buildings, Dale Street, Liverpool L2 2DH

Please return completed forms to:

Name:	Rachel Onikosi, Policy Manager
Postal address:	Department of Business, Innovation and Skills Consumer and Competition Policy Directorate, 1 Victoria Street, London, SW1H OET
Tel:	020 7 215 5898
Email:	stcompliance@bis.gsi.gov.uk

If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group from the list below.

☐	Business representative organisation/trade body
☐	Central government
☐	Charity or social enterprise
☐	Individual
☐	Large business (over 250 staff)
☐	Legal representative
☑	Local Government
☐	Medium business (50 to 250 staff)
☐	Micro business (up to 9 staff)
☐	Small business (10 to 49 staff)
☐	Trade union or staff association
☐	Other (please describe)

Below we set out a variety of questions in relation to our draft set of regulations attached at Annex A of the consultation document

We would like all consultees to fully consider our proposals and **explain the reasons for your answers as fully as possible.**

Repeal of the Pedlars Acts:

Question 1: **Do you agree with the proposed repeal of the Pedlars Acts 1871 and 1881 UK-wide?**

☐ Yes ☑ No

Comments:

No, if pedlars are allowed to be exempted from the street trading law then the public have the right to expect that as a bare minimum they have been vetted by the Police or other public authority. The proposals will leave the Police and local authority powerless to prevent pedlars with relevant convictions from continuing to trade on the City's streets. The legislation should simply be amended as necessary without the "good character" requirement being removed.

Question 1.1 **If you are a police force:**

(i) what is the approximate annual cost of administering the pedlar certification scheme?

(ii)what impacts would repeal of the Acts have in terms of cost, time and/ or other factors?

Comments:

Question 1.2: If you are a pedlar: what do you consider are the impacts of repeal, both in terms of costs, time and/ or other factors?

Comments

Question 1.3: Do you consider that repeal would have an impact on any other organisation, individual or group? If so, please provide details of that organisation etc and what you consider the impacts on them would be.

Comments

Question 2: **Do you agree with our proposed new definition of a pedlar for the purposes of the pedlar exemption from the "national" street trading regime in England and Wales?**

☐ Yes ☑ No

Please fully explain your reasons for agreeing or disagreeing with any element of the proposed definition.

Comments:

No, it will be a "shopping trolley" charter as it will enable anyone to trolley up and down extremely busy pedestrianized shopping streets hawking multifarious goods to passers-by. The Liverpool City Council Act was brought in specifically to prevent this sort of behaviour. Enforcement of the Regulations will be very difficult as it will require constant time-consuming and costly monitoring to ensure that the technical requirements with regard to periods of time and distance from previous locations are not infringed, such enforcement operations being impossible to achieve on a daily basis. It is inevitable that the long, wide shopping streets will become subject to a procession of itinerant traders with trolleys going up and down all day to the annoyance of the public, local businesses and licensed street traders. It can be expected that gangs of traders will quickly take advantage of the relaxation of the law. What is there to prevent six or more traders abreast with trolleys going up and down the main pedestrian thoroughfares other than threats of highway obstruction which the Police are unlikely to pursue ?.

The ability to use receptacles should be removed. If not, then at least require the trader to move on to a different **street** after 10 minutes and cannot return to the same street within 3 hours (rather than a different location which in practice will simply mean they move location within the same street, going up and down the most lucrative shopping streets). By specifying "street" rather than "location" this may at least disperse the traders across a wider area of the town/city centre, although again it is highly unlikely that effective enforcement to ensure the law is complied with will be possible on a daily basis.

Amendments to Schedule 4 to the LG(MP)A

Question 3: **If you are a local authority, do you envisage that there might be circumstances in which you would be able to designate a street as a licence/ consent street in relation to established traders but not in relation to temporary traders?**

☑ Yes ☐ No

Comments:

Yes, possibly the authority may be justified in designating a street as a "licence" or "consent" street for the purposes of street trading by "established traders" but would not be justified in so doing so far as "temporary traders" are concerned, for instance because the designation is justified for the protection of consumers (which is a ground which can only be relied upon with reference to "established traders").

Question 4: **Do you agree that only one photo needs to be submitted with street trading applications which are made electronically?**

☑ Yes ☐ No

Comments:

Yes

Question 5: Do you agree with the proposal to replace the mandatory refusal ground? If not, please explain why you do not think that the 1933 Act provides adequate protection and why the minimum age requirement of 17 needs to be retained. (see paragraph 1.32).

☑ Yes ☐ No

Comments:

Yes

Question 5.1: If you are a local authority, can you indicate the approximate number of applications you would expect to be made from those under 17 years of age?

Comments:

VERY FEW

Question 6: **Would it be helpful for BIS to issue guidance on the circumstances in which the discretionary grounds in 3(6) (a), (d), (e) and (f) can be used? (see paragraphs 1.33 and 1.34 above).**

☑ Yes ☐ No

Comments:

Yes

Question 7: **Do you think there are any circumstances in which the existing paragraph 3(6)(b) ground could be used compatibly with the Directive and, if so, please give reasons. (see paragraphs 1.36 - 1.37).**

☐ Yes ☑ No

Comments:

No

Question 7.1: **Do you consider that it is necessary to insert a new replacement "suitability" refusal ground into paragraph 3(6)? (see paragraph 1.38)**

☐ Yes ☑ No

Comments:

No, when a street is designated as a "licence" street there is therefore an

acceptance that it is suitable for street trading per se. It is difficult to think of any circumstances when it would be suitable for one type of trading but not another (other than because there are already sufficient shops or street traders selling such goods).

Question 7.2: **In relation to this new ground, can you tell us:**

(i) In what circumstances you would use this ground and how often?

(ii) Whether this ground would produce costs on you as a local authority, or on you as a business and what these costs are likely to be?

☐ Yes ☐ No

Comments:

Question 7.3: **Would it be helpful for BIS to issue guidance on the circumstances in which this replacement ground could be used?**

☑ Yes ☐ No

Comments:

Yes, if such a ground were introduced.

Question 8: **Do you think there are any circumstances in which either of these grounds could be used compatibly with the Directive in relation to temporary traders? (see paragraphs 1.39 -1.42)**

☐ Yes ☑ No

Comments:

No

Question 8:1: **Do you think it would be preferable to pursue our proposed approach of expressly preventing the grounds from being used in relation to temporary traders or to repeal the grounds completely?**

☑ Yes ☐ No

Comments:

Yes, preferable to pursue current approach rather than repeal.

Question 8.2: **Will local authorities continue to use these grounds in relation to established traders?**

☑ Yes ☐ No

Comments:

Yes, this Authority has a very high demand for licensed pitches which cannot be met. It is unacceptable for licences to be renewed where they are insufficiently used by the existing licence-holder at a time when other persons are desperate to trade full-time in the same location.

Question 8.3: **Do you foresee any difficulties with our proposals to limit the circumstances in which these grounds could be used in relation to established traders?**

☐ Yes ☑ No

Comments:

No

Question 9: **Do you foresee any problem resulting from the proposed repeal of paragraph 3(8) of Schedule 4 to the LG(MP)A? (see paragraph 1.43)**

☐ Yes ☑ No

Comments:

No

Question 9.1: **Do you agree with our assumption that those who may benefit from this provision are more**

likely to be UK nationals than nationals of other Member States?

☑ Yes ☐ No

Comments:

Yes

Question 10: Do you foresee any problems with our proposal to give local authorities flexibility to grant licences for longer than 12 months or indefinitely? (see paragraphs 1.44 – 1.47)

☐ Yes ☑ No

Comments:

No

If you are a local authority can you further tell us

Question 10.1: Whether lengthening the duration of licences would have a positive, negative or neutral impact on the ability of new street traders to obtain licences to trade in your licence streets?

☐ Yes ☐ No

Comments:

The likely effect of lengthening the duration would probably have a negative effect on the ability of new street traders to obtain licences. There is a high demand for licences and only certain streets are designated as "licence" and within each of those streets there are a finite number of designated pitches.

Question 10.2:

(i) Whether you are likely to issue licences for more than a 12 month period of indefinitely?

☐ Yes ☐ No

(ii) If you are likely to issue licences for a defined period which is longer than 12 months, what period you are likely to choose?

Comments:

Not possible to say at present.

Question 11: **Would it be helpful for BIS to issue guidance as to how the PSR may affect a local authority's ability to use some or all of the revocation grounds contained in paragraphs 5(1)(a) to (c) in relation to established traders/temporary traders? (see paragraphs 1.48 – 1.50)**

☑ Yes ☐ No

Comments:

Yes

Question 11.1: **Do you think there are circumstances in which the paragraph 5(1)(d) ground could be used compatibly with the Directive in relation to temporary traders?**

☐ Yes ☑ No

Comments:

No

Question 11.2: **(i) Do you think it would be preferable to pursue our proposed approach of expressly preventing that ground from being used in relation to temporary traders or to repeal the ground completely?**

☑ Yes ☐ No

(ii) Will local authorities continue to use that ground in relation to established traders?

☑ Yes ☐ No

Comments:

Yes, preferable to pursue current approach rather than repeal. This authority will continue to use this ground in relation to established traders.

Question 11.3: **Do you foresee any difficulties with our proposals to limit the circumstances in which that ground can be used in relation to established traders?**

☐ Yes ☑ No

Comments:

No

Question 12: **Do you foresee any problems with our proposals -**

To disapply regulation 19(5) of the PSR where a mandatory ground for refusal of the application exists; or

☐ Yes ☑ No

To leave it to local authorities to decide whether to put arrangements in place to disapply the regulation in other circumstances, or to specify what conditions will automatically attach to a licence which is deemed to have been granted under regulation 19(5)? Please give reasons for your views (see paragraphs 1.51 – 1.53)

☐ Yes ☑ No

Comments:

12.1 No
12.2 No, leave it to the local authority to specify the conditions.

Question 13: Do you foresee any problems with our proposals to allow local authorities to relax the prohibition in paragraph 7(7) in its entirety where appropriate? (see paragraphs 1.54 -1.57)

☐ Yes ☑ No

Comments:

No

Question 14: Do you foresee any problems with our proposals to amend paragraph 10(1)(d)? (See paragraph 1.59)

☐ Yes ☑ No

Comments:

No

Question 15: Please can local authorities tell us about any other local Acts regulating street trading which are not listed at Annex B of this document (or any Acts listed in Annex B which have in fact been repealed).

Comments:

None

Question 15.1: Please can local authorities tell us-

(i) whether having screened your local street trading Acts for compliance with the Directive, amendments /repeals need to be made to that legislation;

(ii) if such amendments/ repeals are needed whether you wish us to include them in our regulations.

Comments:

Yes, if any amendments needed these will be communicated to you separately to be included in the proposed Regulations.

Question 16: **Please can local authorities tell us-**

(i) what consequential amendments are needed to the provisions listed in Annex C as a result of the repeal of the Pedlars Acts (and provide appropriately drafted provisions);

(ii) whether any consequential amendments are needed to other provisions of local Acts as a result of the repeal of the Pedlars Acts (and, if so, provide appropriately drafted provisions);

(iii) if any of the provisions listed in Annex C are no longer in force.

Comments:

Yes, if any amendments needed these will be communicated to you separately to be included in the proposed Regulations

Question 17: **Can local authorities tell us-**

(i) what consequential amendments are required to the provisions of local Acts listed above at paragraph 1.73 as a result of our proposed amendments to Schedule 4 to the LG(MP)A, and provide appropriately drafted provisions?

(ii) whether (and, if so, what) consequential amendments are required to <u>any other provisions</u> of local Acts as a result of our proposed amendments to Schedule 4 to the LG(MP)A (and again provide appropriately drafted provisions)?

Comments:

Yes, if any amendments needed these will be communicated to you separately to be included in the proposed Regulations

Do you have any other comments that might aid the consultation process as a whole? Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Comments:

It is imperative that you re-assess the proposal to repeal the Pedlars legislation in its entirety. You do not appear to recognise the harm that this will undoubtedly cause to the busy shopping streets of the nations' towns and cities. Numerous cities would not have gone down the expensive and time-consuming route of seeking Local Acts to curb the activities of so-called "pedlars" if there was not a very real and pressing need to do so. Your proposals will lead to a "free-for-all" by itinerant traders nationally which resource-pressed authorities will be unable to effectively enforce against.

Your proposed "wait and see" approach towards giving authorities enhanced enforcement powers is ill-conceived and irresponsible in the extreme. Without additional enforcement powers, such as Fixed Penalty Notices and the power to seize goods of traders suspected to be trading illegally, going hand-in-hand with the liberalisation of the street trading / pedlar laws, many authorities will be in effect left "toothless" to prevent widespread breaches of the new legislation.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply ☑

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

☐ Yes ☑ No