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.**

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Please return completed forms to:

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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
X☐	Other (please describe) Police Service

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 x No

Comments:

Durham Constabulary strongly disagrees with the proposal to repeal the Pedlars Act.

At Durham Constabulary, we believe this change to satisfy European legislation could, if implemented have a meaningful impact on law enforcement agencies ability to prevent crime and protect the public in their own homes.

We believe Police Forces throughout the country will be able to supply evidence and intelligence of hundreds of individuals who have been refused a Pedlar's certificate based on the fact that they are not considered to be of good character.

Indeed it can be argued that the success of the current certification process in screening out criminals allows the government consultation paper to be able to state they have no evidence to support the need for an authorisation process and 'we *have no evidence to suggest that pedlars who operate substantially within the current definition of a pedlar in the Pedlars Act 1871 ("genuine pedlars") should be subject to an authorisation regime'..* It is our argument that the evidence is lacking as police forces are successful under current arrangements at screening out those who cannot be trusted to go to front doors within our communities, often coming into contact with some of the most vulnerable within society.

In this latest consultation paper it states:

Authorisation schemes that apply to temporary providers can be justified

*but only on very limited grounds: that they are non-discriminatory; that they are necessary (i.e. that they can be justified for reasons of public policy, **public security**, public health or protection of the environment); and that they are proportionate, i.e. that they are suitable for attaining the objective pursued and do not go beyond what is necessary to attain that objective. For these purposes, "reasons of public policy" has a narrow interpretation namely protection against a genuine and sufficiently serious threat affecting one of the fundamental interests of society.*

*Any justification for an authorisation scheme must be based on clear evidence. **We have no evidence to suggest that pedlars who operate substantially within the current definition of a pedlar in the Pedlars Act 1871 ("genuine pedlars") should be subject to an authorisation regime for any of the reasons mentioned above.** We have concluded that an authorisation regime in respect of temporary providers cannot therefore be justified.*

The possible justifications for maintaining authorisation schemes that apply to established service providers in member States are less restrictive and include, for example, consumer protection. However, given that service providers (including pedlars) are required under the Provision of Services Regulations 2009 (SI 2009/2999) to provide certain information to those receiving their services and to deal with complaints promptly, justification on consumer protection grounds would appear not to be tenable especially as pedlars, like other traders, are subject to other consumer protection regulation. Furthermore, we are not aware of any evidence of consumer detriment caused by the activities of pedlars who trade within the current definition.

We believe the police service will be able to provide a body of evidence and intelligence to justify maintaining authorisation schemes for Pedlars.

DURHAM CONSTABULARY SPECIFIC

In the last 12 months, Durham Constabulary has received 12 applications of which 7 (58%) were refused. Examples of applicants refused include:

- One applicant had 25 previous convictions, many for dishonesty offences
- An applicant had previous convictions including intimidating an elderly person to purchase bed plus other offences including dishonesty offences.
- An applicant had previous convictions for handling stolen goods.

- Numerous applications have been made giving false addresses. This has come to light as home visits are made by Durham Constabulary staff to verify the address as part of the application process.

See appendix A below for 2 case studies, which underline the risk to the public.

A systems check has been conducted at Durham Constabulary covering the last 12 months in an attempt to identify intelligence submissions by officers and members of the public relating to suspicious activity by persons selling door to door. There have been a total of 84 individual entries identified. There are likely to be more entries because offences under the Pedlars act are not recordable, making direct searching difficult. Although detailed analysis of the results has not been carried out at this time, many of the entries relate to concerns by members of the public, some relate to oppressive selling tactics, excessive prices being charged for goods, sellers trying to negotiate their way into houses and a small number are linked directly to crimes such as selling items recently stolen from shops. The number of intelligence entries for a relatively small and lightly populated area is high, if a co-ordinated national intelligence picture is obtained, there are likely to be thousands of similar reports.

Conclusion / recommendation

Whilst it is accepted that there is a requirement to act within European law, Durham Constabulary challenge the Government comment that '**we *are not aware of any evidence of consumer detriment caused by the activities of pedlars who trade within the current definition'*.** We have given a number of examples in this paper where people with serious criminal records have applied and been refused Pedlar certificates within the last year.

The comments (above) from the consultation paper, in relation to lack of evidence of Pedlars acting outside the law do not take cognisance of those screened out before certification. It seems perverse that the majority of certified Pedlars probably do operate substantially with the current definition of the Act; our argument is that the current certification system screens out those that would act dishonestly.

We suggest that the national intelligence picture in relation to inappropriate applicants, and criminal/suspicious activity by persons selling door to door should be established. We believe such an exercise may establish a legal basis for maintaining an authorisation scheme based on a genuine and sufficiently serious threat. We are in the process of progressing this through ACPO.

We agree with the recommendation in the government paper to update the definition of Pedlar.

We support the recommendation to reduce the age of Pedlars to 16 i.e school

leaving age. Persons younger than this could present a risk to themselves, so we do not support a complete lifting of the age restriction.

As the fee of £12.25 is so small, we at Durham Constabulary would be happy to see the fee abolished.

Appendix A

Case Studies

Case study 1 - Mr X

In April 2011, Durham Constabulary reviewed an application for a Pedlar's certificate submitted by Mr X. X had recorded his address in Darlington, stating he had lived there for 8 years. It is of note that X does not have any criminal convictions.

A PCSO visited the address given by X and spoke to a female who identified herself as his Grandmother, she stated he did not live at that address but lived at another address in the same town. It is of note that police intelligence dated September 2009 suggests X had been living at the second address since that time. He had clearly given a false address.

X was informed about the visit to his grandmother's address and subsequently submitted a new application giving his correct address.

Intelligence held on police systems relevant to X was then examined. This intelligence included the following issues which were used as a basis to refuse the certificate:

1. December 2003 intelligence reports from Northumbria Police and the Royal Ulster Constabulary of X selling cameras from a transit. Whilst in Northumbria Police Area and Northern Ireland, X was in company with a male with extensive convictions for offences of dishonesty.

2. March 2004 investigation by Trading Standards into allegations that X

offered to supply goods to which a false trade description was applied, contrary to section 1(1)(b) of the Trade Descriptions Act 1968. He was selling furniture from the back of a van and falsely claiming it to be leather. The investigating officer recommended X for a caution but in his report, the investigator stated '*he is an opportunist who got caught*. *He gave the impression of ignorance, but is well known to other authorities'.*

3. 2006 X was investigated in relation to obtaining money transfer by deception by Humberside Police. He was subsequently charged with this offence but not convicted.

4. November 2009 X stopped re entering the UK and was arrested on a European arrest warrant issued in France on 18 September 2009. The circumstances of the arrest warrant relate to X acting on his own behalf under the cover of a company **ENxxxxxxxxS Ltd.** It was alleged he was carrying out **s**ub standard work (tarring), failure to inform tax and social authorities of his activity in France (concealment of work), no declaration of employees acting on his behalf, canvassing with a contract lacking conditions for execution of the contract and the form for retraction and cashing money without respecting the legal time limit.

5. 14 March 2011 Intelligence received to suggest an associate of X, has come to the attention of South Tyneside Trading Standards in relation to selling memory foam mattresses door to door. He is using a van with **Eyyyyyyye Beds and Mattresses** on the bonnet.

6. 15 March 2011 an intelligence report of a suspicious vehicle in Darlington - white Mercedes sprinter van with **Eyyyyyyye Beds and Mattresses** logo on bonnet sighted in Darlington. The vehicle had insurance details listed as **ENxxxxxxxxS LTD** and the home address of Mr X. Checks carried out indicated that this vehicle was being used by an associate of X, who Trading Standards have 3 reports/complaints from members of the public in relation to selling mattresses. (Document 5) This associate was also arrested with X on 17 May 2010.

7. 17 May 2010 X stopped by police in Humberside driving a vehicle **Ford Transit HDxx xxB,** containing two other males. This vehicle was linked to a burglary committed 28 April 2010. All males were arrested on suspicion of burglary at Jewson's DIY, Hull on 28 April 2010 and money laundering. The occupants of the vehicle stated they were builders working abroad, and were out of the country at the time of the

offence. No charges were brought as checks with P & O Ferries indicated they were out of the country between 25/4/2010 and 30/4/2010.

8. April 2010 an unidentified male driving a van registered **HDxx xxB** enters a builders compound in Durham and steals items. X is linked to this vehicle in February 2010.

9. February 2010, X was stopped driving back into the UK with two other males, one of whom has a previous convictions for fraud, evading duty chargeable on goods.

10. X appears to use different spellings of his forename; namely Henri and Henry.

Case study 2 – Mr Y

Mr Y applied for a renewal of a Pedlars certificate in 2010. Intelligence checks carried out identified that he was not of good character and was not suitable to be reissued with a Pedlar's certificate for the following reasons:

- 2005 arrested on suspicion of sexual touching of a female whilst he was door to door selling. He was not charged with this offence.

- 2010 arrested on suspicion of sexual touching of a female (different allegation and victim to above offence). He was charged with this offence but not convicted.

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:

1. In the last year Durham Constabulary has received 12 applications and refused 7 of these. We estimate the cost of each application is about 3 hours @ £14.25/hour including on costs. Approximately £513/annum.

2. We consider the impact of repeal would be negative. The above costs are minimal and we consider the process is effective at screening out criminals who pose a threat to our communities. It is our role to protect the public and to prevent and reduce crime. One crime committed by a deregulated criminal posing as a Pedlar would cost more to us to investigate than the annual cost of administering an authorised system.

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

Based on our experience of inappropriate persons currently applying and the dramatic impact door step crime has, the impact of a repeal will be most significant on victims of crime, particularly vulnerable people such as the elderly.

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?**

x☐ Yes ☐ No

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

Comments:

As police officers we are more concerned with protecting people in their homes from rogue traders and other criminals using door to door selling as a cover for criminal activity. Therefore the conditions proposed for street trading are of lesser concern. The proposed new definition is clear but with current reductions in local authority funding probably extremely difficult to enforce and therefore just as likely to be abused as the current abuse of Pedlar Certificates by street traders.

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:

No relevant comments

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

x☐ Yes ☐ No

Comments:

No relevant comments

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).**

x☐ Yes ☐ No

Comments:

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:

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:

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:

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:

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:

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:

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:

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

☐ Yes ☐ No

Comments:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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

☐ Yes ☐ No

Comments:

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:

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:

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:

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:

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:

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 x☐

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?

x☐ Yes ☐ No

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