

AGENDA

LICENSING COMMITTEE MEETING



Date: Thursday 24 January 2013

Time: 6.30 pm

Venue: Town Hall, High Street,
Maidstone

Membership:

Councillors Barned, Mrs Gibson, Mrs Gooch,
Mrs Grigg, Mrs Hinder, Mrs Joy,
B Mortimer, Naghi, Parvin (Chairman),
Mrs Parvin and Yates

Page No.

1. Apologies for Absence
2. Notification of Substitute Members
3. Notification of Visiting Members
4. Disclosures by Members and Officers
5. Disclosures of Lobbying

Continued Over/:

Issued on 16 January 2013

The reports included in Part I of this agenda can be made available in **alternative formats**. For further information about this service, or to arrange for special facilities to be provided at the meeting, **please contact JANET BARNES on 01622 602242** To find out more about the work of the Committee, please visit www.maidstone.gov.uk

**Alison Broom, Chief Executive, Maidstone Borough Council,
Maidstone House, King Street, Maidstone, Kent ME15 6JQ**

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| 6. | To consider whether any items should be taken in private because of the possible disclosure of exempt information. | |
| 7. | Minutes of the Meetings held on 22 October, 30 October and 12 November 2012 | 1 - 25 |
| 8. | Hackney Carriage/Private Hire Issues (if any) | |
| 9. | Report of the Head of Democratic Services - BIS Consultation Paper on Street Trading and Pedlary Laws | 26 - 71 |
| 10. | Report of the Head of Democratic Services - Street Trading Policy | 72 - 75 |
| 11. | Report of the Head of Democratic Services - Sexual Entertainment Venue, 87-88 Bank Street | 76 - 78 |
| 12. | Report of the Head of Democratic Services - Dress Code for Hackney Carriage and Private Hire Drivers | 79 - 82 |

PART II

To move that the public be excluded for the items set out in Part II of the Agenda because of the likely disclosure of exempt information for the reasons specified having applied the Public Interest Test.

**Head of Schedule 12A
and Brief Description**

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|-----|---|-----------|---------|
| 13. | Exempt Appendix to the Report of the Head of Democratic Services - Dress Code for Hackney Carriage and Private Hire Drivers | 5 = Legal | 83 - 90 |
|-----|---|-----------|---------|

MAIDSTONE BOROUGH COUNCIL

LICENSING COMMITTEE

MINUTES OF THE MEETING HELD ON 22 OCTOBER 2012

Present: Councillor Parvin (Chairman), and
Councillors Barned, Black, Mrs Gibson, Mrs Gooch,
Mrs Grigg, Mrs Joy, B Mortimer, Naghi, Mrs Parvin and
Yates

52. APOLOGIES FOR ABSENCE

An apology for absence was received from Councillor Mrs Hinder.

53. NOTIFICATION OF SUBSTITUTE MEMBERS

The following substitution was noted:-

Councillor Black for Councillor Mrs Hinder

54. NOTIFICATION OF VISITING MEMBERS

There were no Visiting Members.

55. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members or Officers.

56. DISCLOSURES OF LOBBYING

Councillors Gooch, Grigg and Naghi declared they had been lobbied with regard to Agenda Item 7 – An application for a Sex Establishment licence for 87-88 Bank Street, Maidstone.

57. EXEMPT ITEMS

RESOLVED: That the Items on Part II of the Agenda be taken in private as proposed.

58. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982,
SCHEDULE 3 – APPLICATION FOR SEX ESTABLISHMENT LICENCE – FOR
87-88 BANK STREET, MAIDSTONE, KENT, ME14 1SD

The Committee considered the report of the Head of Democratic Services regarding an application for a Sex Establishment licence for 87-88 Bank Street, Maidstone.

The Legal Advisor to the Committee outlined the order of considerations to be made, dealing with the validity of the application, late objections

received, to consider and determine the application and, with regard to the Council's current policy, on determining the locality and appropriate number of sex establishments in the borough.

The Chairman requested those persons participating in the hearing to identify themselves, this included the Members of the Committee, the Head of Democratic Services, the Legal Advisor, the Committee Clerk, the applicant and his representative, and those making representations who wished to speak.

The Head of Democratic Services outlined the details regarding the late newspaper advertisement of the notice of application and, therefore, the need to confirm validity of the application.

Members considered whether to treat the application as valid in view of the required newspaper advertisement being published two days late. The applicant indicated that in applying on 17th, June 2012 he had missed the deadline for publication in the Kent Messenger that week and he felt that publicity would be wider and meet the purpose of the legislation most fairly if it were advertised in that publication, for width of distribution, on the next available date. Also, many objectors have come forward as a result. The objectors speaking made no representations in this regard. Members decided that they would proceed treating this application as valid as the number of objectors indicated that they had not been inconvenienced and that no prejudice had been caused.

The Head of Democratic Services then informed the Committee that ten objections had been received outside the time during which members must have regard to them but members had discretion to have regard to them having considered whether they were intentionally late, would cause any prejudice to the applicant, unreasonable disruption to Council business and any reasons given for lateness. The applicant's representative indicated that it was felt fair to consider all objections and so he consented to their being considered. Members confirmed that they would have regard to the ten objections received late.

The Head of Democratic Services briefly outlined the application received, his report and the objections received. He informed the Committee that as the Applicant had agreed to 4 x SIA trained staff at the premises during opening hours, the objection from Kent Police had been withdrawn.

The Applicant's representative then presented his case. He stated that the premises were bought in 2010 with the intention of turning it into an entertainment venue, with a sex establishment on part of the first floor. If the licence was granted, the entrance to the sex establishment will be regressed from the street, through a side entrance with no advertisement in Bank Street. Business will be achieved through the internet only and the sex establishment venue will be separate from the café/bar/night club element of the building and not inter-linked. There is a premises licence already in place and refurbishment of the building to a very high standard is on-going. The Committee agreed to allow the circulation of an artist's impression of the front of the building and photographs of the side

entrance. It was also mentioned that the application had stated the use of the venue from 12 midday, however, the applicant's intention is to only open the sex establishment venue in the evening and therefore would like to amend the opening hours to 7pm in the evening.

He stated that, having read the letters of objection, the applicant would also withdraw the operation of the sex establishment venue on a Sunday evening. He felt the impact of this venue on the locality was minimal and that the regeneration of the building as a whole will enhance the locality and the night time economy. The venue will entertain both men and women and they accept all the proposed conditions.

It was stated that the venue would be operated under a strict code for staff and dancers and that there was no evidence that these type of venues, if run properly, have any crime or disorder as a result of them. It was mentioned that the licence, if granted, is only for one year and that the Council can revoke the licence at any time should there be any problem. The company had managed a venue in Rochester for 20 years and one in Purfleet for 22 years with no issues.

The witness for the applicant, Mr Hutchins, then addressed the Committee. He outlined the background to the application and that he welcomed the change in law as it cleans up the industry. He said they were a well-run establishment and welcomed the police and the Council to inspect the property. He mentioned that their venue in Rochester is in the middle of town and that the venue in Purfleet has 74 conditions attached to the licence. The applicant re-iterated that there would be no advertising in Bank Street, it would be internet marketing only.

The objectors, or their representatives, were then given the opportunity to ask questions of the applicant and/or his representative.

In response to questions, the applicant clarified details of the position of the other venues that the applicant runs, stated that passers-by in Maidstone would have no change to their view of the street, felt that the Lilith report was not relevant as it was prepared prior to the changes in 2009, was aware of the University of Leeds report (but not the content) and did not agree that Bank Street was one of the main roads into Maidstone as no vehicular access was allowed. He stated that he recognised the right of local people and that there is a balance to achieve the rights of the community and the operator.

Members of the Committee were then given the opportunity to ask questions of the applicant and/or his representative.

In response to these questions, the applicant explained that the Fire Authority determined the maximum number of people allowed in the venue, but in his own opinion he felt it would not be more than 100. He stated that 18 is the minimum age, but that he would be happy to adopt a Challenge 25 policy. He also responded to questions regarding internal advertising, number of door staff and the number and position of CCTV cameras.

At 12.05 pm there was a 10 minute comfort break.

The applicant responded to further questions regarding the night time economy, visiting Bank Street at club closing time and demand for this type of venue.

The applicant was then given the opportunity to clarify any matter that arose during questioning.

The applicant stated that there had been a misunderstanding about this application from the outset and that it was not the whole building that was to be used as a sex establishment, just a small part of the first floor. There will be over 40 cameras in the whole building, 28 toilet cubicles for women, the music would not be as loud as a nightclub as it is mainly background music and that the night club/café/bar will be totally separate and not inter-linked to the sex establishment venue.

The objectors or their representatives were then given the opportunity to make their representations.

Counsel, representing 87 objectors, asked to circulate a summary of the submissions he would be making. The applicant objected to this as they had not had sight of the document. The applicant's representative requested time to consider the document and to take instructions from his client. The Committee and the applicant agreed this would be done during the lunch break.

Counsel, representing 1 objector, brought the Committee's attention to the Ministerial Foreword in the Sexual Entertainment Venues ("SEVs") guidance notes regarding the reasons the new measures were brought into effect on 6 April 2010 and mentioned that the proposed location of this sex establishment, being in the heart of Maidstone, was not suitable and that, under the legislation, the appropriate number of SEVs in this location should be nil. He noted that there had not been a single representation in support of this application.

The applicant and his representative were then given the opportunity to ask questions. In response, Counsel stated that he felt there was no evidence that there is demand for this type of venue, that the location, being next to the Post Office and opposite the Town Hall, was inappropriate. It would be for the Committee to decide whether this location was where local people want to have an SEV and from the representations this is clearly, no.

There were no questions asked by Committee Members.

The meeting was adjourned at 1.05 p.m. for 55 minutes for lunch.

The Applicant's representative then stated their objection to the document sought to be submitted by Counsel to the 87 objectors stating that he should present his case verbally prevent undue weight being given to his

argument and to ensure fairness. The Committee agreed and therefore the document was not circulated to Members.

Counsel, on behalf of 87 objectors, then presented his case. He stated that the objectors were opposed to the locality of this application as it was in the heart of the town and will have a detrimental effect on this town. He felt it was important to consider the character of the locality and asked the Committee to consider that locality to be the town centre. He said Maidstone was a relatively compact town where everything is intermingled, quoting the distances to various churches, shops, children's centres etc. He felt that children were the main focal point of the objections received, detracting from a great family feel this town currently has, school children passing through this part of town. The applicant spending a lot of money is a red herring and a commercial risk not something Members should take into account. Whether there are womens' events or not, this type of establishment appeals to a particular type of individual with their own issues and this should be considered for Maidstone and on a case by case basis not based on history at other premises.

Counsel then called a witness, Rev. Jackie Cray, to speak, on behalf of Town Centre Management Limited ("TCM") who had written a letter of objection. TCM confirmed they had nominated her. (Cllr Mrs Joy indicated that she knew Rev. Cray as a result of her involvement with street pastors but had not discussed this matter with her in any way.) The witness stated that she supported the letter submitted by TCM and that she was not objecting on moral or religious grounds. Her main concern was the number of hen and stag parties this establishment would attract, that this would not be of benefit to the night time economy and would have a negative impact on the quality of life in the centre of Maidstone.

The applicant then asked questions of the witness regarding the concession made with opening times, footfall figures and objections to previous applications.

The applicant then asked questions of Counsel regarding opening hours, what grounds they have for stating that this establishment would have a negative impact on the area, representation of the businesses in Bank Street.

Members had no questions for the witness or Counsel.

Counsel was then given the opportunity for clarification but had nothing further to add.

An individual objector then addressed the Committee, objecting to the application stating that she had lived in Maidstone all her life, had 2 young children and wanted to protect their rights. She referred to Maidstone having a new and beautiful square and that use by families should not need to stop at 7pm.

The applicant then asked questions regarding the change of opening hours.

Members had no questions for the objector.

The Head of Democratic Services outlined the conditions proposed in his report.

The applicant's representative stated they had no objections to the standard conditions or the extra conditions, confirming the change of hours to 7pm to 6am Monday to Friday, 7pm to 5am on Saturdays and closed on Sunday evenings. It was also stated that they would be happy for their guidelines for safe operation, dancers code of conduct, dancers welfare policy and the customer code of conduct to be included as conditions if the Committee felt that to be appropriate.

Members then discussed the possibility of other conditions relating to later opening times during late night shopping times in the Town Centre and advertising. The applicant's representative indicated that they would accept a condition not to open until 9pm on the 4 Thursdays before Christmas each year.

Members were then given the opportunity ask any questions of clarification of the applicant.

The Head of Democratic Services informed the Committee that many of the objections requested that the authority consider changing its current policy of considering what relevant locality and appropriate number of sex establishments for that in each case on its own merits and at the time of the decision on the application. They requested a change of policy to the number for Maidstone being nil. No representations were made by the objectors speaking at the hearing in this regard. The Head of Democratic Services recommended that the current policy be retained on the basis that the policy had been adopted in 2011, after extensive consultation, and was felt to provide a flexible position for members considering each case because, in any event, any policy pre determining localities and or numbers would have to be reviewed at the time of determining any application and could not bind members for the future. Members considered the policy position and agreed to retain their current policy for those reasons.

All parties were then given an opportunity to sum up.

The Committee then retired to consider the application and

RESOLVED: That the application made by Century Buildings (Rochester) Ltd, on 17th, June, 2012, for a sexual entertainment venue licence for premises at 87-88, Bank Street, Maidstone under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 would be refused under the following grounds of Schedule 3, paragraph 12 of that Act:-

(3)(c) – that the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality.

(3)(d) – that the grant or renewal of the licence would be inappropriate, having regard-

(i) to the character of the relevant locality; or

(ii) to the use to which any premises in the vicinity are put.

The Committee considered; the report and oral presentation of the Head of Democratic Services, the application and all accompanying documents provided by the applicant, the submissions by Mr Walters of counsel and the evidence of Mr. Hutchins on their behalf, the objections received both in time and those which were late (but the Committee exercised their discretion to have regard to them, as consented to by the applicant), the submissions of Sir Tony Baldry MP. of counsel representing the objector whose representation is at page 82 of the agenda, the submissions of Mr Phillips of counsel representing eighty nine objectors,(their objections appearing at pages78, 79, 81, 86, 87, 89, 90, 93, 99, 126, 127, 128, 130, 131, 133, 134, 136, 137, 138, 139, 140, 141, 142, 144, 145, 146, 149, 150, 151, 152, 153, 154, 155, 157, 158, 159, 160, 162, 163, 164, 165, 166, 167, 168, 169, 172, 177, 178, 180, 182, 183, 185, 186, 187, 188, 192, 193, 194, 195, 196, 197, 198, 199, 201, 202, 203, 205, 206, 208, 209, 211, 212, 213, 214, 216, 217, 218, 221, 222, 224, 226, 227, 231, 232, 233, 235, 236, 237, 239 of the agenda) and his witness Rev. Jackie Cray and the submissions of Mrs. Dorcas Kingsford, (objection at page 238 of the agenda). Ten further submissions in response to questions to objectors, relating to locality, character and vicinity, were summarised as agreed by the applicant, but not copied to members. An update to the Committee indicated that the Police observations had been withdrawn by letter following confirmation by the applicant that four SIA registered door staff would be provided at the proposed premises.

Members found that the nature and content of the relevant entertainment proposed was, lap dancing, pole dancing and stage striptease and that events may be held for both male and female audiences. The hours applied for were 12:00 to 06:00 the following day, Monday to Sunday. In the course of the hearing the applicant conceded that in response to the objections and the matters raised he would be content to accept a change of hours to 19:00 to 06:00 Monday to Saturday including to 06:00 Sunday but not Sunday evening to Monday morning. There were, during a conditions discussion, further amendments stated to be acceptable; if the licence were to be granted, moving the starting hour to 20:00 daily and the closing to 05:00 on Sunday morning and also, on the four Thursdays in the run up to Christmas, a start time of 21:00. The sexual entertainment venue operation would take place in part of the first floor of 87-88, Bank Street, as shown on the plan with the application and the applicant stated that the capacity would be likely to be in the region of 100, although there was no confirmed number as yet.

MANDATORY GROUNDS

There was found to be no evidence that any of the mandatory grounds under Schedule 3, paragraph (1) were engaged and none were raised by the Police or objectors.

DISCRETIONARY GROUNDS

SUITABILITY OF APPLICANT ETC. AND LAYOUT ETC. OF PREMISES.

No evidence was found to be relevant to discretionary grounds for refusal in Schedule 3, paragraph 12(3) (a), (b) and (d) (iii) and they were not raised by Police or objectors.

THE RELEVANT LOCALITY

Submissions from objectors on what was the relevant locality for the premises referred to the whole of Maidstone, the town centre, Bank St/High Street and area outside the Town Hall, the High Street regeneration area and pedestrianised areas of the town centre. The locality being characterised by its mixed uses including shops, restaurants, cafes, hairdressers and other businesses, residential, entertainment venues including a nearby SEV, premises with uses involving families and children, such as the Post Office, bus stops where commuters and children congregate and community use of the new Jubilee square and Town Hall. The applicant submitted that the relevant locality would be Bank Street or just the upper end of it as the impact of the premises would be minimal and the locality being one with other night-time economy venues would be suitable, there being no other SEV in bank Street.

Members found that the relevant locality is Bank Street, the High Street from Mill Street up, including Jubilee Square, Middle Row and King Street as far as Wyke Manor Road and The Mall entrance. This being characterised by being part of a conservation area with listed and historic buildings, with mixed uses in the daytime and continuing in to the evening and night time with uses for entertainment and the community uses centring on the Town Hall and Jubilee Square and being part of the Council's High Street regeneration project.

The locality relevant to this application at the time of the determination was not considered to be the same as that at the time a sex shop licence was granted to 89, bank Street in November 2009. That premises closed in 2010 and the High Street regeneration project and Jubilee Square were not then in existence.

NUMBER OF SEVs APPROPRIATE TO THE RELEVANT LOCALITY

Members, having found that the relevant locality is Bank Street, the High Street from Mill Street up, including Jubilee Square, Middle Row and King Street as far as Wyke Manor Road and The Mall entrance then went on to consider what is the number of appropriate sex establishments in the relevant locality. Members considered specifically whether a sex establishment of the type applied for is appropriate to the relevant locality. The number of SEVs considered appropriate for this locality is nil.

CHARACTER OF THE RELEVANT LOCALITY

Members further considered the character of the relevant locality finding it to be part of a conservation area with numerous listed buildings, having a historic value to the public and tourists. Also, part of the High Street regeneration project area. It is an area of mixed uses as stated above and the locality is used by families and community as a pedestrian route and to frequent restaurants and other family orientated activities including those at the Town Hall and Jubilee Square.

An SEV of the type applied for, even one on the first floor, with a side entrance stepped back and operating within the restricted hours offered would be inappropriate in a locality at the heart of the town centre and of this character because the current use by families and people of all ages for all sorts of activity, including family orientated, should be able to continue and the family ambience and community events in Jubilee square should be able to continue to be developed without the addition of an SEV adding to and changing the existing character.

Members sought to carefully limit their consideration to such representations and submissions as directly assisted in the determination of the character of the relevant locality and placed to one side those submissions and representations that were based on understandable but none the less inadmissible moral grounds.

Members also considered submissions that crime and anti-social behaviour would increase but did not find they had sufficient evidence to support this view, independent of perception or fear of increased issues attributable to the proposed premises.

USE OF PREMISES IN THE VICINITY

Consideration was then given to the vicinity of the premises and it was found that this was a smaller area than relevant locality, being Bank Street/Middle Row, including Jubilee Square, from Mill Street to Gabriels Hill. The proposed SEV was considered to be inappropriate to the vicinity of the use of the Town hall and adjacent Jubilee Square for public activities during the day and evening.

Members ALSO considered submissions from objectors about the effect on, places of worship and schools but these did not fall within what members considered to be the vicinity of the proposed SEV, being some distance away and unlikely to be directly affected.

CONCLUSION

FOR ALL THESE REASONS THE APPLICATION WAS REFUSED.

59. DURATION OF MEETING

10.00 a.m. to 5.45 p.m.

MAIDSTONE BOROUGH COUNCIL

LICENSING COMMITTEE

MINUTES OF THE MEETING HELD ON 30 OCTOBER 2012

Present: Councillor Parvin (Chairman), and
Councillors Barned, Mrs Gibson, Mrs Gooch,
Mrs Grigg, Mrs Hinder, Mrs Joy, B Mortimer, Naghi,
Mrs Parvin and Yates

Also Present: Councillor McKay

1. APOLOGIES FOR ABSENCE

There were no apologies for absence.

2. NOTIFICATION OF SUBSTITUTE MEMBERS

There were no Substitute Members.

3. NOTIFICATION OF VISITING MEMBERS

Councillor McKay was in attendance.

4. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members or Officers.

5. DISCLOSURES OF LOBBYING

Councillors Mrs Grigg and Naghi disclosed that they had been lobbied in respect of Agenda Item 7 – Application for Sex Establishment Licence for Tantric Blue, 9 Gabriels Hill, Maidstone.

6. EXEMPT ITEMS

RESOLVED: That the Items on Part II of the Agenda be taken in private as proposed.

7. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982,
SCHEDULE 3 – APPLICATION FOR SEX ESTABLISHMENT LICENCE – FOR
TANTRIC BLUE, 9 GABRIELS HILL , MAIDSTONE, KENT, ME15 6HL

The Committee considered the report of the Head of Democratic Services regarding an application for a Sex Establishment licence for 9 Gabriels Hill, Maidstone.

The Legal Advisor to the Committee outlined the order of considerations to be made, dealing with late objections received, to consider and determine

the application and, with regard to the Council's current policy, on determining the locality and appropriate number of sex establishments in the borough.

The Chairman requested those persons participating in the hearing to identify themselves, this included the Members of the Committee, the Head of Democratic Services, the Legal Advisor, the Committee Clerk, the applicant and his representative, and those making representations who wished to speak.

The Committee were informed that forty nine objections and 3 letters of support had been received outside the time during which members must have regard to them. However, Members had discretion to have regard to them having considered whether they were intentionally late, would cause any prejudice to the applicant, unreasonable disruption to Council business and any reasons given for lateness. 5 late objectors addressed the Committee and indicated that they had not heard about the application until after the 28 day period had passed and had not been intentionally late, they requested that members operate their discretion to admit late objections and hear from them. The applicant's representative indicated that no late objections had been received close to the cut off date and a number had been in the last week. He invited the Committee to draw a distinction and consider only the earlier ones, if any. He also said that Members were being asked for two things, firstly to consider the objections and secondly to allow those objectors to address the Committee by speaking, submissions and questioning witnesses. He asked that if admitted just the written objection be allowed. Members decided that they would have regard to all the objections and letters of support received late and hear any representations made by their authors who wish to speak, because in their view all information should be available to the Committee and there would be no prejudice to the applicant, who had received copies of these prior to the meeting and had the opportunity to deal with them.

All late objectors and/or their representatives were given an opportunity to state their case regarding the late objections. The applicant's representative stated that they would accept those objections received just after the closing date, but felt those received within the last week should not be considered. Having considered the statements made, the Committee agreed to accept all the late objections and letters of support received.

An application was made by Sir Tony Baldry MP of counsel, representing Players, an objector, on the basis that members should refuse this application without further need for hearing because, as a matter of fact, the premises fell within the relevant locality determined by members, on 22, October 2012, in relation to premises at 87-88, Bank Street, for which they found the appropriate number of Sexual Entertainment Venues ("SEVs") to be nil.

The applicant's representative argued that it was wrong for the representative of another venue to seek to remove the Committee's

discretion. There was a determination of a relevant locality and nil appropriate number for SEVs but each case should be considered on its own merits and Members should hear all the information good or bad and are entitled to do so. They may not agree nil is the appropriate number and he should be given the opportunity to persuade them otherwise indicating why this case is an exception and the reason why this case could be found appropriate.

The Legal Advisor to the Committee indicated that her advice would be that each case should be considered on its own merits at the time of the determination. Members have to take in to account the locality in the past case as a factor when considering this case but it is not the only factor. The ground referred to is a discretionary one. Locality can change over time and this is confirmed by case law. Locality can differ from Committee to Committee provided that there are good reasons. Whilst there should be consistent decision making members are not bound by previous decisions as precedent. No further comments were made by the parties.

The Committee considered this matter whilst retired to read admitted late representations and decided to hear the application. On returning to public session the decision was announced that Members would proceed to hear the application on the basis that each case should be considered on its own merits at the time of the decision. They accept that they need to take into account their previous decisions on locality as a factor when considering this case but that is not the only factor. Schedule 3, paragraph 12 c) is a discretionary ground and Members need to hear all the information on this case to operate their discretion. Locality can change over time and Members consider each case and come to a reasoned administrative decision on the facts in the case. The representatives of the parties will have the opportunity to make their submissions in due course.

The Head of Democratic Services briefly outlined the application received, his report and the objections received. He informed the Committee that the Applicant had offered to vary the hours of opening to take into account the hours of opening of the Mall Chequers Shopping Centre, not opening until after the centre closes, and that, with regard to the layout, this had now been varied, following concerns raised by Officers, to include CCTV cameras in the private booths. It had been established that changing rooms on the second floor would be locked and so that issue had been resolved.

The Applicant's representative then presented his case. He stated that the applicant had taken considerable time to find the most suitable location to invest in Maidstone and seek to put forward good reasons as to why the licence should be granted. He was aware that, although the postal address of the property was Gabriels Hill, the entrance to the property is from King Street which is just within the locality determined by the Committee the previous week and they sought to show the Committee reasons why this licence should be granted as an exception, irrespective of that nil determination. This in three respects; specific location, specific hours of operation and the operation itself could be such as to make it

appropriate to grant the application. The licence would be for one year and would have to justify itself for renewal each year.

In relation to the character of the premises and the vicinity, he felt that in this particular part of Maidstone, changes between the day time and the night time. He stated that King Street is a thoroughfare between Gabriels Hill and Bank Street which are both dominated by bars, clubs and other adult entertainment in the evening. It is proposed that the SEV is only open after the Mall Chequers Shopping Centre is closed and therefore he submitted that it would not adversely affect the character.

It was added that this specific location was chosen as the main entrance gates are situated some 10 metres back from the highway, and the entrance door a significant distance further through the gates and round the corner, with the Mall Chequers noticeboard also obscuring the view. When walking out of town the entrance would not be obvious. He accepted the premises are within the conservation area and there are listed buildings in Gabriels Hill but the layout of the building means that in Gabriels Hill it is on the first floor and therefore anyone walking along that street will only see the betting shop, Paddy Power at street level. The windows on the first floor facing Gabriels Hill will be obscured.

With regard to opening hours, he said the intention is to not open until at least 8pm and on the occasions when the Mall Chequers Shopping Centre is open until 8pm (normally in the run up to Christmas), it is proposed that it does not open until 9pm or later if the Committee require it. He stated that the premises would have quality decor and entertainment, product pricing, including the menu, would be for the top end of the market and that differentiation in price would control the customer type. Being priced at the higher end of the market will attract a more mature clientele. He explained who would manage the premises and their experience and also commended the evidence of Mr Murdoch, on the papers.

The witness for the applicant, Mr Tregidgo, then addressed the Committee. He said that they are looking to attract an older more established clientele to the area. The marketing will be very discreet and will work with Officers to ensure that any marketing material is approved beforehand. The marketing will be web based, not hand to hand on the street, targeting local businesses, corporate entertainment. They will not be promoting stag or hen parties.

The objectors, or their representatives, were then given the opportunity to ask questions of the witness and/or his representative.

In response to questions, the applicant's representative said they would employ approximately 35 staff on the busiest nights, there would be no signage visible from King Street and their marketing would be targeted, with flyers and cards which may be distributed to business people. It is not their intention to hand out flyers on the street to anyone passing. Their financial plan allows for a substantial period of time to build up customers.

Members of the Committee were then given the opportunity to ask questions of the witness and/or his representative.

In response to these questions, the applicant and/or his representative said that the pubs and clubs in Maidstone cater for the 18-25 year old market and they were offering something for the older clientele, they had spoken to local businesses and gained support from 34 businesses within the town centre. It was noted that the picture of the entrance to the premises was an artist's impression and not what it would look like in reality, it would not be possible to see through the doors/windows.

It was also stated that women would be able to join the club and would be encouraged to come along. Bookings can be taken by phone or over the internet as well as just turning up at the door and there will be a strict dress code.

Anne Marie Harris and Neil Culley were called to deal with residual questions that had arisen and confirmed that they currently have over 175 dancers on their books who travel all over the country with an age range over 19 to 44. They do not generally dance in their own area and that security staff would be SIA trained and the premises would have full CCTV facilities.

The meeting was then adjourned for an hour for lunch.

The applicant's representative then called a further witness, Mr Monty, with regard to his statement. Mr Monty explained that the £500,000 investment is broken down to £270,000 for the fit out costs, £200,000 working capital for the first 5 months of operation and £15,000 for the start-up marketing costs.

In response to questions, Mr Monty stated that it is believed that this market is not catered for in Maidstone. He was unable to give a further breakdown of the £15000 marketing budget.

Members had no questions of Mr Monty.

The objectors or their representatives were then given the opportunity to make their representations.

An objector, (p91 of the agenda), stated that this area of Maidstone attracted families at all times, including the evening. Along King Street there was the bowling alley, Burger King and Pizza Hut and a hostel for vulnerable teenagers was just round the corner. The objector felt the proposed location was inappropriate for these reasons and would cause irreparable damage to the town centre.

There were no questions for this objector.

Counsel for Players, called his witness Mr Pemble, the owner of Players which has an SEV licence. He stated that he had been in this industry for 10 years and had owned Players for 3½ years. He mentioned that there

were 6 other SEVs within a 20 mile radius of Maidstone and he welcomed this competition.

He stated that they had objected to this application as he did not think the proposed location was appropriate. He said that there was no market for the higher end clientele proposed, Players has a VIP area and this is only used by about 4 or 5 clients per week. The average spend is £70-£80 per customer. He added that they had offered food in the past, but there was no call for it as people did not eat at the hours the venue was open. On a busy Saturday he could have 100 – 120 customers but that varies on week days.

The applicant's representative then asked questions of the witness regarding the layout of Players, the range of seating available, the lack of a stage area, the number of shows put on during the evening ,the dress code of the dancers when they are not dancing and confirming the club does distribute flyers.

In response to questions from Members, the witness stated that the average age range at weekends was 20-28 and during the week it would be slightly higher. Asked whether at their busiest time they turn people away he confirmed that in the last 3 years people queued for 20 minutes last Christmas only. He also confirmed that they charge an entry fee.

Mr Simons, Counsel for an objector, addressed the Committee regarding the previous decision, stating that each decision is made on its own merits but that the Committee, if deciding to grant this application, will need to think very carefully about reasons if they depart from the previous decision. In his view they have no reason to do so as the locality and its characterisation are the same.

With regard to character, he made the following points:-

- Access to the proposed club from King Street is adjacent to The Mall Chequers and although there may be no direct visibility the risk is that it is not known what their advertising proposals are.
- Closing Times – Pizza Hut is directly opposite the entrance and open until 9pm most week nights as well as other family orientated restaurants and the bowling alley.
- There are a variety of places of worship nearby, residential premises and a variety of other licensed premises and consideration should be given to those residents with regard to the increase in footfall in that area.
- The newly established Jubilee Square is only 50 metres from the proposed site, together with bus stops and taxi ranks and concern was raised again about signage.

He also stated that consideration should be given to whether 2 SEVs are appropriate for this area and that the proposed location is within the Maidstone conservation area.

Mr Wyles, representing Town Centre Management Limited ("TCM"), addressed the Committee. He stated that TCM feel this location is not appropriate due to the number of retail outlets and residential premises in the vicinity, many open late and all ages use the town This is in the core part of town.

Counsel for the applicant asked a number of questions of Mr Wyles regarding membership of TCM, what TCM provide for businesses in the town and the Midsafe radio system. In response to a question, Mr Wyles stated that a vote of its members was not taken to object to this application but that they had spoken to the majority of members at meetings and one to ones. He said that he was surprised by the assertion that 34 businesses had been supportive.

Counsel for Players asked for TCM's view of Players as an SEV, to which Mr Wyles responded that as it is not, as they would define, in the core town centre.

In response to questions from Members, Mr Wyles stated that he was not aware of TCM being approached by a business to become a member before having premises in Maidstone and that they have had a number of meetings where this application has been discussed.

Mr Pattison, Chairman of Celebrate Maidstone, then addressed the Committee as an objector. He informed the Committee that the organisation was new and that their aim was to raise the profile of the Town. They are looking to hold public events in the town centre to attract visitors and families to the town centre during the day and night and that they object to this application as they feel it will undermine the good work that they are doing and that it will not be for the long term benefit of the town.

Counsel for the applicant asked questions of Mr Pattison regarding noise levels in Gabriels Hill and Jubilee Square to which Mr Paterson was unsure.

Members then asked questions of Mr Pattison regarding his organisations' aims and associations.

The representative for Kent Invicta Chamber of Commerce then addressed the Committee. He stated that although the Chamber applauded the applicant for wanting to invest in Maidstone and bring high-spending individuals into the town, they could not accept inward investment at any price. He stated that the Chamber were approached by members of the local Maidstone business community with concerns about the impact of such a club on them and anti-social behaviour associated with all male groups. He said that the Maidstone night time economy is thriving and recently achieved Purple Flag status. He also raised a concern regarding equality, stating that the Chamber of Commerce is committed to see men and women secure in business with equal opportunities. He felt that the club would be in conflict with late night shopping, the night time economy and family restaurants such as Pizza Hut.

Counsel for the applicant was then given the opportunity to ask questions. The Chamber representative responded that they do not have a specific voting system for Members but it was Members who came to them asking them to do something, they would support employment for local people and they represent the business community as a whole. He said that he strongly doubted that no-one would see the premises from the High Street or that no-one would go on elsewhere within the town centre.

There were no questions from other parties or Members.

A further objector, (p46 of the bundle of late representations), who wished to remain anonymous, then addressed the Committee stating that Maidstone during the day is different to the evening but that this balance is changing. There are a number of flats close by that are being bought by commuters and due to the historical location of our train stations outside the town centre, a number of commuters now walk through town late at night on their return home. The objector stated that they had taken a look at the front of the said premises during the lunch break and found it possible to see right up to the door and that people going in and out of the premises would attract interest from passers-by.

Counsel for the applicant was then given the opportunity to ask questions. In response the objector said they felt uneasy in town at night and that although solid gates would help to a certain extent, she felt that teenagers would still be curious.

There were no further questions, so the meeting was adjourned for 10 minutes for a comfort break.

Counsel for the applicant was then given the opportunity to comment regarding conditions. He said they accept the standard conditions and also accepted the proposed additional conditions relating to security, door supervisors and CCTV. With regard to the proposed amendments to conditions 15, 19 and 26, they also requested these. Counsel also submitted that, as outlined at the start of the meeting the opening times change to state they open one hour after the advertised closing of the Mall Chequers and also offered a condition to restrict the admission to the premises to persons aged 21 and over.

Counsel to an objector proposed an amendment to condition 15 to replace the wording "...the entrance or immediately outside of the premises ..." to "... on the public highway or ...". This was agreed by all parties.

Members then asked questions of the applicant's Counsel regarding other possible conditions relating to Sunday morning closing time, an over 21 policy for their dancers/staff, obscuring of windows and doors and the distance between the performer and the patron.

Members were then given the opportunity to ask any questions of clarification of the applicant.

The Legal Advisor informed the Committee that many of the late objections requested that the authority consider changing its current policy of considering what relevant locality and appropriate number of sex establishments for that in each case on its own merits and at the time of the decision on the application. They requested a change of policy to the number for Maidstone being nil. No representations were made by the objectors speaking at the hearing in this regard. The Head of Democratic Services recommended that the current policy be retained on the basis that the policy had been adopted in 2011, after extensive consultation, and was felt to provide a flexible position for members considering each case because, in any event, any policy pre determining localities and or numbers would have to be reviewed at the time of determining any application and could not bind members for the future. Members had reconsidered this issue on 22, October 2012 and agreed to retain their policy. Members further considered the policy position and agreed to retain their current policy for the reasons given above.

All parties were then given an opportunity to sum up.

The Committee then retired to consider the application and

RESOLVED: That the application made by Illuminati Ventures Ltd, on 17, July 2012, for a sexual entertainment venue licence for premises at 9 Gabriels Hill, Maidstone under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 would be refused under the following grounds of Schedule 3, paragraph 12 of that Act:-

(3)(c) – that the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality.

(3)(d) – that the grant or renewal of the licence would be inappropriate, having regard-

(i) to the character of the relevant locality; or

(ii) to the use to which any premises in the vicinity are put.

The Committee considered; the report and oral presentation of the Head of Democratic Services, the application and all accompanying documents provided by the applicant, the submissions by Mr Sutherland and the evidence of Mr. Tredigo, Mr. Culley, Ms. Harris and Mr Monty, on their behalf, the objections received both in time and those which were late, (including three emails in support), the Committee having exercised their discretion to have regard to them, the submissions of Sir Tony Baldry MP. of counsel representing Players, whose objection is at page 92 of the agenda and the evidence of Mr. Pemble, the submissions of Mr. Wyles for Maidstone Town Centre management Ltd, whose objection is at page 89 of the agenda, the submissions of an objector whose objection is at page 91 of the agenda, the submissions of Mr Simons of counsel representing the objector whose objection is at number 2 of the bundle of late objections and the submissions of Mr. Pattinson, Mr Ghinn, Mr. Williams and Mrs. Relle (objections at numbers;5, 31/47on behalf of Kent Invicta

Chamber of Commerce , 34 and 47 of the bundle of late objections respectively)who members agreed to hear.

An update to the Committee by the Head of Democratic Services indicated that a fresh layout plan had been provided by the applicant including CCTV cameras in two private booths, where they had previously not appeared and that confirmation had been provided that the door to the performers dressing room would be locked and not accessible to the public. He also, stated that members had considered an SEV application on 22, October 2012 for premises at 87-88 Bank Street and had refused a licence. The relevant locality for premises that was found to be Bank Street, the High Street from Mill Street up, including Jubilee Square, Middle Row and King Street as far as Wyke Manor Road and The Mall entrance, and the appropriate number of SEVs for that locality nil. Members found that the nature and content of the relevant entertainment proposed was, lap dancing, pole dancing, stage striptease and erotic dance. The hours applied for were Sunday to Wednesday 20:00 to 05:00 the following day, Thursday to Saturday 20:00 to 06:00 the following day. In the course of the hearing the applicant indicated that they would be content to accept hours which were conditioned that they would not open until one hour after closure of The Mall to account for any late opening, including Christmas. There were, during a conditions discussion, further amendments stated to be acceptable; if the licence were to be granted, moving the closing to 05:00 or if required 04:00 on Sunday morning. The sexual entertainment venue operation would take place, as shown on the plan with the application accessed from King Street at ground floor level via a courtyard, that level being at first floor level at the Gabriels Hill frontage from which there would be no access to the SEV, the ground floor of the premises in Gabriels Hill being currently occupied by Paddy Power.

The Applicant submitted that the proposed operation of the premises was to be high end, mature clients, low numbers and not targeting stag parties in marketing. Members also heard evidence from Mr. Pemble that this proposal would not succeed with this type of model in Maidstone. Members took the view that the economic model and commercial viability was not a matter that was relevant to their consideration in respect of the discretionary grounds of , "relevant locality and number of sex establishments", " relevant locality and character" and "use of premises in the vicinity".

MANDATORY GROUNDS

There was found to be no evidence that any of the mandatory grounds under Schedule 3, paragraph (1) were engaged and none were raised by the Police or objectors.

DISCRETIONARY GROUNDS

SUITABILITY OF APPLICANT ETC. AND LAYOUT ETC. OF PREMISES.

No evidence was found to be relevant to discretionary grounds for refusal in Schedule 3, paragraph 12(3) (a), (b) and they were not raised by objectors. Whilst d) (iii), was raised in the objection by Players no reason

was given and this was not pursued at the hearing. There was no evidence to substantiate this ground.

THE RELEVANT LOCALITY

Submissions from objectors on what was the relevant locality for the premises referred to Maidstone town centre and at the hearing particularly to the area found to be the relevant locality for premises at 87-88, Bank Street. The locality being characterised by its mixed uses including shops, restaurants, cafes and other businesses, residential, entertainment venues, premises with uses involving families and children, such as The Mall, Pizza Hut, Burger King, bus stops where commuters and children congregate and community use of the new Jubilee square and Town Hall, also numerous places of worship, as a conservation area and an area of regeneration.

The applicant submitted that the premises were just inside the relevant locality decided for 87-88, Bank Street, whilst the postal address is 9, Gabriels Hill the entrance is off King Street, but on the specific facts of this application the Committee could find an exception to their nil determination for that locality in relation to the specific location of the site, specific hours of operation and specific operation itself. The applicant characterised the locality as different in the daytime to night time. In their submission the locality was family orientated during the day but at night in this part of town the focus becomes bars and nightclubs and other adult entertainment such as bingo, Gabriels Hill having entertainment premises and the Town Square being dominated by Muggletons and premises in Bank Street. The Mall is closed and the people using the thoroughfare of King Street are using the night time economy.

It was submitted by the applicant that Members could and by objectors that they ought to adopt the same locality as that decided in a previous application, (in Bank Street), considered by the Committee last week. Although members noted that both the applications were in the same broad geographic vicinity of each other they nonetheless considered that each application is to be decided on its own merits and at the time it was being heard. Accordingly Members took the view that it was necessary to consider the relevant locality afresh.

Members found that the relevant locality is Bank Street, the High Street from Mill Street up, including Jubilee Square, Middle Row and King Street as far as Wyke Manor Road and The Mall entrance. This being characterised by being part of a conservation area with listed and historic buildings, with mixed uses in the daytime and continuing in to the evening and night time with uses for entertainment and the community uses centring on the Town Hall and Jubilee Square and being part of the Council's High Street regeneration project. King Street, where the entrance to the premises would be located, is a pedestrian thoroughfare where users of all ages visiting Pizza Hut, AMF and other family uses in the town centre pass and also wait at bus stops and the taxi rank.

NUMBER OF SEVs APPROPRIATE TO THE RELEVANT LOCALITY

Members, having found that the relevant locality is Bank Street, the High Street from Mill Street up, including Jubilee Square, Middle Row and King Street as far as Wyke Manor Road and The Mall entrance then went on to consider what is the number of appropriate sex establishments in the relevant locality. Members considered specifically whether a sex establishment of the type applied for is appropriate to the relevant locality. The number of SEVs considered appropriate for this locality is nil. The applicant submitted that the proposed operation of the premises was to be high end, mature clients, low numbers and not targeting stag parties in marketing. Members were not convinced that this would make a significant difference to the impact the proposed premises would have on the character of the relevant locality. They also expressed doubt that the proposed operation could be maintained by the imposition of conditions seeking to ensure compliance with nebulous aims of , "high end" and "mature clients".

CHARACTER OF THE RELEVANT LOCALITY

Members further considered the character of the relevant locality finding it to be part of a conservation area with numerous listed buildings, having a historic value to the public and tourists. Also, part of the High Street regeneration project area. It is an area of mixed uses as stated above and the locality is used by families and community as a pedestrian route, to frequent restaurants and other family orientated activities including those at the Town Hall and Jubilee Square and to wait for public transport at bus stops and the taxi rank.

An SEV of the type applied for, even one with an entrance gated 10 metres back from the highway and with a further courtyard before the entrance doors, operating within the restricted hours offered and with the stated intended nature of operation would be inappropriate in a locality in the centre of the town and of this character. The current use by families and people of all ages for all sorts of activity, including family orientated, should be able to continue and the family ambience and community events in Jubilee square should be able to continue to be developed without the addition of an SEV adding to and changing the existing character.

Members sought to carefully limit their consideration to such representations and submissions as directly assisted in the determination of the character of the relevant locality and placed to one side those submissions and representations that were based on understandable but none the less inadmissible moral grounds. Members also considered submissions that crime and anti social behaviour would increase but did not find they had sufficient evidence to support this view, independent of perception or fear of increased issues attributable to the proposed premises.

USE OF PREMISES IN THE VICINITY

Consideration was then given to the vicinity of the premises and it was found that this was a smaller area than relevant locality, being the area around the Town Hall and Jubilee Square and the High Street and King

Street from there to Wyke Manor Road and the Mall entrance. The proposed SEV was considered to be inappropriate to the vicinity of the use of the Town hall and adjacent Jubilee Square for public activities during the day and evening and of family orientated restaurants such as Pizza Hut immediately opposite the proposed premises and open until later than the proposed opening time.

Members also considered submissions from objectors about the effect on, places of worship and schools but these did not fall within what members considered to be the vicinity of the proposed SEV, being some distance away and unlikely to be directly affected.

CONCLUSION

FOR ALL THESE REASONS THE APPLICATION WAS REFUSED.

8. DURATION OF MEETING

10 am to 6.16 pm.

MAIDSTONE BOROUGH COUNCIL

LICENSING COMMITTEE

MINUTES OF THE MEETING HELD ON 12 NOVEMBER 2012

Present: **Councillor Parvin (Chairman), and
Councillors Barned, Mrs Gibson, Mrs Gooch,
Mrs Grigg, Mrs Hinder, Mrs Joy, B Mortimer, Naghi
and Mrs Parvin**

1. APOLOGIES FOR ABSENCE

An apology for absence was received from Councillor Yates.

2. NOTIFICATION OF SUBSTITUTE MEMBERS

There were no Substitute Members.

3. NOTIFICATION OF VISITING MEMBERS

There were no Visiting Members.

4. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members or Officers.

5. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

6. EXEMPT ITEMS

RESOLVED: That the Part II Item on the Agenda be taken in public but the information contained therein remain private.

7. MINUTES

That the Minutes of the Meeting held on 16 October 2012 be approved as a correct record and signed.

8. HACKNEY CARRIAGE/PRIVATE HIRE ISSUES (IF ANY)

There were no issues to be discussed.

9. STREET TRADING CONSENT – MR I YOUNG

The Committee considered the report of the Head of Democratic Services regarding a variation to the consent granted on 30 July 2012. The variation being sought was to change the dimensions of the stall from

4'x4' to 4'x6' and to change the days and hours of operation by adding Sunday from 10.00 a.m. to 6.00 p.m.

The Head of Democratic Services confirmed to Members that no objections had been received in relation to the variation application and that the reason for the increase in the size of the cart was so that an extractor fan could be incorporated which would reduce the impact of any smell arising on the surrounding area.

Members raised some concerns with regard to the length of trading hours requested and felt it would be more appropriate for the hours to match the opening times of the majority of nearby shops.

RESOLVED:

1. That the variation in respect of the stall size be agreed to allow for inclusion of an extractor fan which would reduce the impact of any smell arising on the surrounding area.
2. That the variation in respect of Sunday trading be amended to six hours to match the opening times of the majority of nearby shops to the trading site and that the Head of Democratic Services be authorised to set the times in the final consent, as this was considered appropriate to fit into the area of trading.

10. REVIEW OF LICENSING FEES AND CHARGES

The Committee considered the report of the Head of Democratic Services regarding the level of fees to be charged in respect of discretionary licence fees relating to animal boarding, performing animals, dangerous wild animals, zoos, breeding of dogs, pet shops, horse riding establishments, street trading and sexual establishment venues, together with the fee levels for licensing for Hackney Carriage and Private Hire vehicles.

RESOLVED: That no change to the current fees and charges, as set out in Appendix 1 to the report of the Head of Democratic Services, be approved.

11. HACKNEY CARRIAGE FARES INCREASE

The Committee considered the report of the Head of Democratic Services regarding a request received from the Maidstone Taxi Proprietors' Association for an increase in fares, by means of a 10% decrease in the meterage on the meter which will lead to an increase in fares of 6.7% on all 3 tariffs for customers travelling a 2 mile journey.

Some Members raised concern regarding the amount of the increase and felt this was too high.

RESOLVED:

1. That the table of fares set out in Appendix B to the report of the Head of Democratic Services be agreed.

2. That the Head of Democratic Services be given delegated authority to give public notice of the Council's intention to fix this table of fares for hackney Carriage vehicles in accordance with Section 65(2) of the Local Government (Miscellaneous Provisions) Act 1976 to take effect from 10 December 2012. This notice to make the level of increase as clear as possible.

12. MINUTES (PART II)

RESOLVED: That the Minutes (Part II) of the Meeting held on 16 October 2012 be approved as a correct record and signed.

13. DURATION OF MEETING

6.30 p.m. to 7.14 p.m.

Agenda Item 9

MAIDSTONE BOROUGH COUNCIL

LICENSING COMMITTEE

24 JANUARY 2013

REPORT OF HEAD OF DEMOCRATIC SERVICES

Report prepared by Neil Harris

1. BIS CONSULTATION PAPER ON STREET TRADING AND PEDLARY LAWS

1.1 Issue for Decision

1.1.1 To consider a response to be made to the consultation paper on Street Trading and Pedlary Laws attached at Appendix A.

1.2 Recommendation of Head of Democratic Services.

1.2.1 That the proposed response to the consultation paper on Street Trading and Pedlar Laws as set out in Appendix B to the report be approved for submission to BIS.

1.2.2 That the documents for inclusion at responses 15.1, 16 and 17 be drafted by parliamentary agents instructed by the Council , delegated authority to submit the recommended wording be given to the Head of Democratic Services.

1.3 Reasons for Recommendation

1.3.1 As a result of the need for the UK to ensure full compliance with the European Services Directive, (2006/123/EC), the Department for Business Innovation and Skills has issued a consultation paper on draft regulations to repeal the Pedlars Acts and to make changes to the street trading regime. The proposals within the consultation paper make significant changes to the law in this area. It is recommended that the Council submits a response particularly as it will also need to amend the provisions of the Maidstone Borough Council Act 2006 which is specifically referred to in the regulations.

1.3.2 A proposed response to the consultation and the questions set out therein is set out in Appendix B to the report.

1.3.3 In summary the key issue is to maintain the principles set out in The Council's street trading policy and the Maidstone Borough Council Act 2006 in so far as is possible whilst ensuring full compliance with the EU Directive.

1.4 Alternative Action and why not Recommended

1.4.1 The Council could decide not to respond to the document but would miss the opportunity to influence the changes to be made and amend the provisions and measures set out in the Maidstone Borough Council Act 2006 without incurring the expense of doing this individually at a later date..

1.5 Impact on Corporate Objectives

1.5.1 Failure to respond to this document and amend the provisions of the Maidstone Borough Council Act 2006 would be contrary to the priorities Maidstone have adopted to have a growing economy and be a decent place to live.

1.6 Risk Management

1.6.1 Failure to respond could result in the Council losing the benefits Maidstone Borough Council Act 2006 and no longer having the controls that it has put in place in respect of street trading in the Maidstone Borough area.

1.7 Other Implications

1.7.1

- 1. Financial
- 2. Staffing
- 3. Legal
- 4. Equality Impact Needs Assessment
- 5. Environmental/Sustainable Development
- 6. Community Safety
- 7. Human Rights Act
- 8. Procurement
- 9. Asset Management

X

1.7.2 The legal implications have been dealt with in the body of the report.

1.8 Conclusions

1.8.1 None.

1.9 Relevant Documents

1.9.1 Appendices

1.9.2 Appendix A –A Joint Consultation on Draft Regulations – Repeal of Pedlars Acts and Changes to Street Trading.

1.9.3 Appendix B –Draft response to consultation questions on Street Trading and Pedlary Laws consultation paper.

IS THIS A KEY DECISION REPORT?

Yes No

If yes, when did it first appear in the Forward Plan?

This is a Key Decision because:

Wards/Parishes affected:

1.9.4 Background Documents

1.9.5 None.



Department
for Business
Innovation & Skills

**STREET TRADING AND
PEDLARY LAWS –
COMPLIANCE WITH THE
EUROPEAN SERVICES
DIRECTIVE**

A joint consultation on draft regulations - Repeal of the Pedlars Acts (UK- wide), and changes to street trading legislation in England and Wales and Northern Ireland

NOVEMBER 2012

Contents

Executive Summary	3
How to respond	6
Additional copies	7
Confidentiality & Data Protection.....	8
Help with queries.....	8
What happens next?	8
Introduction.....	10
Chapter 1 - Proposal to repeal the Pedlars Acts 1871 and 1881 (Part 2 of the draft Regulations at Annex A).....	13
Chapter 2 - Proposals to amend Schedule 4 to the LG(MP)A.....	16
Chapter 3 - Screening of local street trading Acts in England or Wales against the Directive's requirements, and consequential amendments to other legislation.	28
Consultation Questions: England and Wales	32
Chapter 4 - Proposals to amend the Street Trading Act.....	36
Consultation Questions: Northern Ireland	47
Chapter 5 - Proposals to repeal section 39(3)d of the Civic Scotland Act 1982 to take account of the repeal of the Pedlars Act (see Annex A)	51
Consultation questions: Scotland	51
ANNEX A – Draft Regulations.....	52
ANNEX B - LOCAL ACTS REGULATING STREET TRADING THAT NEED TO BE SCREENED BY RELEVANT LOCAL AUTHORITIES AGAINST THE REQUIREMENTS OF THE DIRECTIVE:	72
ANNEX C - PROVISIONS OF LOCAL ACTS THAT MAY REQUIRE CONSEQUENTIAL AMENDMENT AS A RESULT OF THE REPEAL OF THE PEDLARS ACTS	75
ANNEX D - The Consultation Code of Practice Criteria.....	76
ANNEX E – List of Organisations/Individuals consulted in relation to England and Wales.....	77
ANNEX F – List of Councils/Departments consulted in relation to Northern Ireland.....	79

A joint consultation on draft regulations to repeal the Pedlars Acts 1871 and 1881 (UK-wide), and to amend the street trading legislation in England and Wales and in Northern Ireland to secure compliance with the European Services Directive

Executive Summary

- 1 This joint consultation between the UK Government, the Northern Ireland Executive and the Scottish Government¹ sets out proposals and draft Regulations (attached at Annex A) to-
 - (a) amend “national” street trading legislation for England and Wales and for Northern Ireland to ensure that the legislation complies fully with the requirements of the European Services Directive 2006/123/EC (“the Directive”); and
 - (b) repeal the Pedlars Act 1871 and 1881 in relation to the whole of the UK, again in order to ensure compliance with the Directive.

The consultation also reemphasises the need for local authorities in England and Wales to screen their local street trading legislation against the requirements of the Directive.

- 2 Chapter 1 of this document sets out the proposals of the UK Government, the Northern Ireland Executive and the Scottish Government to repeal the Pedlars Acts 1871 and 1881 in relation to England and Wales, Northern Ireland and Scotland in order to secure compliance with the Directive.
- 3 Chapter 2 sets out the proposals of the UK Government to amend Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 (“the LG(MP)A”) (which sets out the “national” street trading regime for England and Wales), in order to ensure that Schedule 4 complies fully with the Directive. (See Annex A for the draft Regulations.) It also sets out the new definition of pedlary and provides the new legal basis for the exemption of pedlars from the national street trading regime.
- 4 Chapter 3 of this document deals with consequential amendments that are required to other legislation as a result of some of the above proposals, and also with the screening by local authorities of local street trading legislation in England and Wales against the Directive’s requirements.
- 5 Chapter 4 of this document sets out the changes that the Northern Ireland Executive proposes to make to the Street Trading Act (Northern Ireland) 2001 (which sets out the street trading regime for Northern Ireland) in order to ensure that their legislation fully complies with the requirements of the Directive. Part 4 of the draft Regulations, attached at Annex A, detail the proposed changes in respect of Northern Ireland.

¹ In this consultation, Scotland are jointly consulting on the repeal of the Pedlars Acts only.

- 6 Chapter 5 of this document sets out the Scottish Government's proposals to make consequential amendments to section 39 of the Civic Government (Scotland) Act 1982 as a result of the repeal of the Pedlars Acts. The draft regulations to achieve this are attached at Annex A of this document.
- 7 The need to analyse the pedlary and street trading legislation against the requirements of the Directive followed the consensus reached by EU Member States in 2010 that the retail sale of goods is generally a service activity within the scope of the Directive. This change in interpretation was addressed in detail in the Government Response (published in March 2011) to the joint consultation on modernising street trading and pedlar legislation. In that response, we explained that amendments to the legislation were necessary and that we would be consulting as early as possible on our proposals – a copy of the Government response can be viewed at - [Street Trading and Pedlary consultation - Government Response](#).
- 8 In conducting our analysis of the provisions of both Schedule 4 to the LG(MP)A and the Pedlars Acts against the requirements of the Directive, the UK Government liaised with local authorities to test our analysis with them, and we took account of their views. We also received and considered the views and comments of a number of pedlars and other interested stakeholders. The general approach we are proposing to take is to make the minimum changes necessary to ensure compliance of the relevant regimes with the Directive. In particular, we have considered the justifications for maintaining the relevant authorisation schemes - the current certification scheme contained in the Pedlars Act 1871 for those wishing to trade as a pedlar and the street trading licence/consent regime contained in Schedule 4 to the LG(MP)A for those wishing to engage in street trading.
- 9 The Northern Ireland Executive has also conducted an analysis of its street trading regime against the requirements of the Directive, and is also proposing to make the minimum changes to that regime that are necessary to ensure that it complies with the Directive.

Requirements of the European Services Directive

- 10 The primary aim of the Directive is to make it easier for service businesses to set up or sell their services anywhere in the European Union (EU). The Directive distinguishes between two categories of service provider – (a) those established in the UK or seeking to establish in the UK and (b) those who are exercising the right to provide cross-border services in a Member State other than the one in which they are established.
- 11 In order for an authorisation scheme (such as the pedlars' certification regime or the street trading licensing regime) to be justified in relation to service providers who are established in the UK or seeking to establish in the UK, the requirements of Article 9 of the Directive must be met. In order for an authorisation scheme to be justified in relation to those exercising the right to provide cross-border services, the requirements of Article 16 of the Directive must be met.

Repeal of the Pedlars Acts 1871 and 1881

- 12 We propose to repeal the Pedlars Acts 1871 and 1881 in relation to the whole of the UK. They establish an authorisation scheme for the purposes of the Directive. In our view, the requirements of Articles 9 and 16 of the Directive are not met in relation to the certification regime contained in the Pedlars Acts, and it therefore needs to be abolished. The repeal of

these Acts would include repeal of the current definition of “pedlar” contained in the Pedlars Act 1871, but we are proposing that a new, more precise and up-to-date definition of what behaviour constitutes acting as a pedlar be inserted into the pedlar exemption from the relevant street trading regimes (see paragraph (1)(2)(a) of Schedule 4 to the LG(MP)A and section 2(1)(e) of the Street Trading Act (Northern Ireland) 2001. The effect of inserting this new definition would be to continue to protect the rights of “genuine” pedlars to operate (including those established in other European Economic Area (EEA) States who wish to exercise their freedom to provide services in the UK).

Amendments to Schedule 4 to the LG(MP)A and to the Street Trading Act (Northern Ireland) 2001

- 13 The UK Government proposes to make amendments to some of the provisions of Schedule 4 to the LG(MP)A, in particular those concerned with the designation of streets, the discretionary and mandatory grounds for refusing or revoking a street trading licence/consent, and the maximum duration of a licence/consent.
- 14 The Northern Ireland Executive are proposing to amend provisions of the Street Trading Act (Northern Ireland) 2001, in particular those concerned with pedlar exemption from street trading, application procedures, discretionary and mandatory grounds for refusing applications, determination of applications, the duration of licences and the frequency and duration of temporary licences.
- 15 The purpose of the proposed amendments to these Acts is to ensure that they are fully compliant with the Directive.

Amendments to local street trading legislation to secure compliance with the Directive

- 16 Many local authorities have their own local street trading legislation in place to enable them to regulate street trading in a way that they consider best suits their local needs. However, such legislation also needs to be fully compliant with the Directive. All local authorities who have local street trading legislation need (if they have not already done so) to analyse their legislation against the Directive’s requirements. The UK Government has offered, in relation to those local authorities in England and Wales who conclude that amendments are required to their local primary legislation in order to secure compliance with the Directive, to make these amendments in the Government’s proposed Regulations, providing that the relevant local authority provides to us, by the end of the period for responding to this consultation or as agreed by us, appropriately drafted provisions to achieve the amendments which can be slotted into the Regulations (together with an explanation of why those amendments are required). This will alleviate the need for a local authority (whose local street trading legislation is identified as not being fully compliant with the Directive) to promote primary legislation to achieve the necessary legislative changes.

Consequential Amendments to Primary and Secondary Legislation (e.g. those needed as a result of the repeal of the Pedlars Acts)

- 17 Various amendments and repeals will be needed to certain provisions of primary and secondary legislation (e.g. as a result of the repeal of the Pedlars Acts). This is to ensure,

for example, that the legislation in question continues to be workable. (Please see paragraphs 1.67 – 1.76 below for further information).

How to respond

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents on the response form (for England and Wales) and where applicable, how the views of members were assembled.

ONLINE RESPONSES

A copy of the consultation document is available electronically at [street trading and pedlary consultation 2012](#) and a copy of the consultation response form can be found at [street trading and pedlary consultation 2012 - Response Form 2012](#). Copies of the consultation document are also available on the DSD website (<http://www.dsdni.gov.uk/index/consultations.htm>) and www.scotland.gov.uk

ENGLAND & WALES

You can also respond to this Consultation online at <https://www.surveymonkey.com/s/stcompliance>

EMAIL/WRITTEN RESPONSES & ENQUIRIES TO:

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NORTHERN IRELAND

You can respond to this Consultation online at:

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A list of those organisations and individuals consulted is attached at Annexes E and F. We would welcome suggestions of others who may wish to be involved in this consultation process.

Additional copies

You may make copies of this document without seeking permission. Further printed copies of the consultation document can be obtained from:

David Evans
Department for Business, Innovation and Skills
1 Victoria Street,
London SW1H 0ET
Tel: 020 7215 0335

Or an electronic version can be found as described ³⁶above.

Other versions of the document in Braille, other languages or audio-cassette are available on request.

Confidentiality & Data Protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the UK or Scottish Government or the Northern Ireland Executive.

Help with queries

Questions about the policy issues raised in the document can be addressed to:

Rachel Onikosi by email to Rachel.onikosi@bis.gsi.gov.uk or by telephone on 020 7215 5898 for England and Wales.

By email to social.policy@dndni.gov.uk for Northern Ireland.

By email to Walter.drummond-murray@scotland.gsi.gov.uk for Scotland.

If you have any comments or complaints about the way this consultation has been conducted, these should be sent to:

John Conway
BIS Consultation Coordinator
1 Victoria Street
London
SW1H 0ET
Telephone: 020 7215 6402
or email to: john.conway@bis.gsi.gov.uk

A copy of the Government's Consultation Code of Practice can be found at Annex D.

This consultation closes on **Friday 15 February 2013** and all responses must be received either on or before this date.

Following the close of the consultation period, BIS will publish all of the responses received from England and Wales, unless specifically notified otherwise (see confidentiality and data protection section above for full details). Northern Ireland and Scotland may also issue responses on request unless specifically notified otherwise (see confidentiality and data protection section above).

The Government will, within 3 months of the close of the consultation, publish the consultation response. This response will take the form of decisions made in light of the consultation, a summary of the views expressed and reasons given for decisions finally taken. This document will be published on the BIS (www.bis.gov.uk) and DSD (<http://www.dsdni.gov.uk/index/consultations.htm>) websites with paper copies available on request. The Scottish government may also publish the government response on their website.

Introduction

1. In November 2009, following research conducted by Durham University on the perception of street trading and pedlary in the UK, the UK Government and the Scottish Government jointly consulted on proposals to amend and modernise the legislation governing street trading and pedlary. A copy of the consultation can be viewed here - [Street Trading and Pedlary consultation 2009](#)
2. As explained in the Government Response to that consultation ([Street Trading and Pedlary consultation - Government Response](#)), our interpretation of compliance with the Directive developed in the course of the evaluation of the Directive amongst Member States, so that now the consensus is that the retail sale of goods is generally a service activity within the scope of the Directive. As pedlars and street traders are engaged in the retail sale of goods, we concluded that the legislation that provides for authorisation regimes governing their activities needed to be analysed against the Directive's requirements.
3. The UK Government has screened both the Pedlars Acts (pedlars' certification regime) and Schedule 4 to the LG(MP)A ("national" street trading licensing regime) for compliance with the Directive, and the Northern Ireland Executive has screened the Street Trading Act (Northern Ireland) 2001 against the Directive's requirements. We are now consulting on the proposed changes that we consider should be made to this legislation as a result, and on draft Regulations to achieve these changes.

Wider Intention to Reform the Street Trading Regime

4. This consultation is the first set of proposals that we are consulting on in relation to street trading and pedlary. We will look to seek views on the possibility of giving more effective enforcement powers to local authorities in England and Wales in order to help them enforce the reformed street trading and pedlary regime more robustly. We will be working with local authorities to identify the exact challenges that are faced, (or potentially could be faced in light of some of our new proposals), in their specific localities. The outcome we would be seeking is a new legal framework which helps local authorities effectively tackle any illegal street traders, whilst respecting the free market provisions of the Directive and defending the business interests of legitimate pedlars and street traders.

Application and requirements of the Directive:

5. The Directive was implemented into UK domestic law by the Provision of Services Regulations 2009 ("the PSR") (S.I. 2009/2999). The primary aim of the Directive is to eliminate barriers to the freedom of establishment for service providers in the Member States and to the free provision of services between Member States (while maintaining a high quality of services). The Directive is intended to make it easier for service businesses, for example, street traders, to set up or sell their services anywhere in the European Union (EU).
6. The Directive distinguishes between two categories of "service provider", namely a service provider who is exercising the freedom of establishment (referred to in this document as an "established trader"), and a service provider who is exercising the right to provide cross-border services in a Member State other than the one in which he is established (referred

to in this document as a “temporary trader”). In order to make an established trader subject to an authorisation scheme, the requirements of Article 9 of the Directive must be met. In order to make a temporary trader subject to an authorisation scheme, the requirements of Article 16 must be met. The requirements of Article 16 are more difficult to satisfy, and for this reason there may be circumstances in which an authorisation scheme can be applied to established traders but not to temporary traders.

Authorisation Schemes

7. An “authorisation scheme” is defined by Article 4(6) of the Directive as “any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof”. For example, the requirement under the Pedlars Acts for a person who wishes to act as a pedlar to apply to the police for a pedlar’s certificate is an authorisation scheme for the purposes of the Directive.

Established traders

8. Article 9 of the Directive applies in relation to established traders: Member States are prohibited from making access to, or the exercise of, a service activity subject to an authorisation scheme unless the following conditions are satisfied:
 - the authorisation scheme does not **discriminate** against the provider in question - Article 9(1)(a)
 - the need for an authorisation scheme is justified by an **overriding reason relating to the public interest** (“an ORRPI”)- Article 9(1)(b)
 - the objective pursued cannot be attained by means of a less restrictive measure (in particular, because an a posteriori inspection would take place too late to be genuinely effective) - Article 9(1)(c).
9. Article 4(8) defines what is meant by an ORRPI, namely reasons recognised as such in the case law of the European Court of Justice, and provides examples of these. Further guidance is given in recitals (40) and (41) to the Directive. Examples of ORRPIs are: public policy, public security, public safety, public health, protection of consumers, recipients of services and workers, combating fraud, and the protection of the environment and the urban environment. It should be noted that the concept of “public policy” only covers protection against a genuine and sufficiently serious threat affecting one of the fundamental interests of society (e.g. the protection of vulnerable adults).

Temporary traders

10. Article 16 of the Directive applies in relation to temporary traders: Member States are prohibited from making access to, or exercise of, a service activity in their territory subject to compliance with any requirements which do not respect the following principles:
 - **Non-discrimination:** the requirement may be neither directly or indirectly discriminatory with regard to nationality or, in the case of legal persons, with regard to the member state in which they are established;

- **Necessity:** the requirement must be justified for reasons of public policy, public security, public health, or the protection of the environment;
- **Proportionality:** the requirement must be suitable for attaining the objective pursued, and must not go beyond what is necessary to attain that objective.

11. Article 16 contains only four possible justification grounds (public policy, public security, public health and the protection of the environment). This is to be contrasted with the ORRPI concept contained in Article 9. The latter concept covers many more grounds and, as recital (40) to the Directive makes clear, may continue to evolve.

Chapter 1 - Proposal to repeal the Pedlars Acts 1871 and 1881 (Part 2 of the draft Regulations at Annex A)

1.1 Below we detail our proposals (reflected in the proposed draft Regulations set out at Annex A) to repeal the Pedlars Acts 1871 and 1881 in relation to the whole of the UK.

Regulation 2 – Repeal of the Pedlars Acts 1871 and 1881.

1.2 We propose to repeal the Pedlars Acts 1871 and 1881 in relation to the whole of the UK.

1.3 Pedlars are currently regulated by the Pedlars Acts 1871 and 1881. A person intending to trade as a pedlar (anywhere in the UK) must apply for a pedlar's certificate from the police and must meet the following criteria:

- he must have resided in the police area for the chief officer of police to whom he applies for the certificate for at least one month before his application;
- be of good character (and in good faith intend to carry on the trade of a pedlar); and
- be above 17 years of age.

1.4 This certification regime is an authorisation scheme for the purposes of the Directive, and can only be retained in relation to established traders if the requirements of Article 9 of the Directive are met, and in relation to temporary traders if the requirements of Article 16 are met. It is our view that the certification scheme cannot be retained in relation to either category of trader since to do so is very likely to be incompatible with the Directive. The Government response to the joint consultation on modernising street trading and pedlar legislation set out why we do not think the pedlars' certification regime can be retained. The following additional points should be noted:

1.5 As mentioned above, the applicant must have been resident in a police area for at least one month before an application for a pedlar's certificate can be made. This residency requirement is specifically prohibited by Articles 14(1) and 16(1)(a) of the Directive (as it is a discriminatory requirement based directly or indirectly on nationality). A trader from another member State who wishes to travel to the UK and to trade as a pedlar here (whether he wishes to establish himself here or to trade here temporarily) will be unable to do so for at least a month whilst this restriction remains in place.

1.6 The requirement that the applicant must be of good character is difficult to determine and flawed in practice on the basis that there are no standardised checks in relation to adjudicating 'good character' by the issuing authority. For example evidence from the [Durham University Report](#) on the perception of pedlary and street trading concluded that the procedures for ascertaining 'good character' differed from force to force. Therefore in practice it appears that whether a person is of good character or otherwise is determined subjectively, a practice which goes against the principles of the Directive, which is to be able to provide justifications for imposing barriers to trade based on a strong evidence base. We think that retention of this requirement cannot be justified under Article 16 in

relation to temporary traders, and that it is also very unlikely that its retention can be justified under Article 9 in relation to established traders.

- 1.7 The certification regime also imposes a requirement that an applicant be above 17 years of age. We do not think that retention of this requirement can be justified under either Article 9 or 16 of the Directive. In particular, individuals under the age of 17 are not generally restricted from starting up their own business, providing they adhere to the rules governing that particular trade, and the Children and Young Persons Act 1933 contains provisions designed to protect young persons (please see paragraphs 1.30 -1.31 below).
- 1.8 To summarise, our view is that retention of the pedlar certification scheme would not be compatible with the Directive and, as the certification scheme is the main purpose of the Pedlars Acts, the Pedlars Acts should be repealed in their entirety.
- 1.9 We have considered proposals made by several pedlars to amend the Pedlars Acts rather than to repeal them. However, as explained above, we do not think that we can retain the certification scheme (including the “good character” requirement) consistently with the Directive. “Genuine” pedlars will be able to continue to trade without the Pedlars Acts being in place, so we see no practical reason for them to remain in force. Without the certification regime, the main significance of the Acts is to provide a definition of pedlary – albeit one which is currently out of date and not very clear - which is of value to the pedlar community as it forms the basis for their exemption from the street trading regime contained in Schedule 4 to the LG(MP)A. We are therefore proposing to formulate a clearer and more modern definition of pedlary for the purpose of that exemption, to enable “genuine” pedlars to continue to trade. Please see draft regulation 4 in Annex A and paragraphs 1.15 – 1.24 below.
- 1.10 The Government is aware that some pedlars have an emotional attachment to the Pedlars Acts and see their proposed repeal as a threat to their identity and their position within communities. But it makes no legal difference whatsoever whether the definition of pedlary that is used for the purpose of the pedlar exemption from Schedule 4 to the LG(MP)A is set out in an old Act of Parliament or in Schedule 4 to the LG(MP)A itself (in provisions which are inserted by the proposed Regulations). What matters is the terms of the definition. As mentioned above, the Government is also committed to making the law clearer and more up-to-date. Our view at this stage, therefore is that the definition of pedlary in the Pedlars Acts should be repealed, and a new and updated definition of pedlary should be inserted into the street trading legislation.
- 1.11 Our view is also that, apart from imposing a barrier to trade which cannot be justified in accordance with the Directive’s requirements, the Pedlars Acts place unnecessary burdens on pedlars who should be free to trade with the minimum restrictions and costs placed on them. They are also unnecessarily burdensome on local police forces who are responsible for issuing the pedlar certificates.
- 1.12 We would welcome the views of all parties on this issue.

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

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?

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

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.

Chapter 2 - Proposals to amend Schedule 4 to the LG(MP)A

1.13 We set out below our proposals to amend Schedule 4 to the LG(MP)A, which sets out the national street trading regime for England and Wales.

Part 3 of the Regulations - amendments to Schedule 4 to the LG(MP)A

Regulation 4 - Exemption for Pedlars from Schedule 4 to the LG(MP)A

1.14 Our view is that it is important that, following repeal of the Pedlars Acts, "genuine" pedlars continue to be exempt from Schedule 4 to the LG(MP)A, so that they are free to trade with the minimum number of restrictions. We intend to insert into Schedule 4 a detailed definition of what activity constitutes acting as a pedlar for the purposes of the pedlar exemption contained in paragraph 1(2)(a) of Schedule 4. We have taken the opportunity to update the definition of a pedlar setting out the activity which, in our view, constitutes genuine pedlary. We believe that a clearer and more up-to-date definition will help pedlars, street traders and local authorities to properly identify behaviours that do and do not fall within the ambit of the street trading regime. This should also make it easier for local authorities to take enforcement action against illegal street traders.

Proposed New Definition of a Pedlar

1.15 The nature of pedlary is that pedlars travel and trade on foot. We propose that the new definition continues to include a requirement that the pedlar trades only on foot. In addition, a pedlar will be required either-

(a) to trade by means of visits from house to house; or

(b) if he trades by other means (i.e. trading with pedestrians while travelling through the streets) or partly by other means (i.e. partly trading with pedestrians while travelling through the streets and partly trading house to house), to comply with various requirements explained below.

1.16 Firstly, the pedlar must either carry all his goods on his person without any means of support, or all such goods must be carried in or on a receptacle (which may or may not be wheeled) which he pushes or pulls. In addition, the combined dimensions of that receptacle together with any articles in or on it must not exceed the specifications below

- 2 metres high
- 1 metre long
- 1 metre wide.

1.17 The purpose of these requirements is to ensure that pedlars do not use receptacles/displays for their goods which are unduly large and cumbersome and likely to cause obstruction to others using the streets. (In addition, these requirements enable a

pedlar who is unable for any reason to carry goods about his person to use a reasonably sized receptacle to carry the goods).

- 1.18 The receptacle must be pushed or pulled by the pedlar since the nature of pedlary is that the pedlar keeps on the move.
- 1.19 We believe that the maximum measurements we are proposing are more than adequate for the purposes of any individual pedlar wishing to transport and display a reasonable amount of goods for sale whilst keeping on the move. The size of the receptacle/display must be limited to balance the rights of pedlars to trade with the rights of other street users and the need to keep the streets reasonably clear of obstructions. We believe that the maximum measurements we are proposing strike a reasonable compromise.
- 1.20 As the nature of pedlary is that a pedlar travels and trades while on the move, we propose three further general limitations on the manner in which a pedlar may trade: firstly, a maximum period of time for which a pedlar can remain in a location with a view to trading; secondly, a minimum period of time that must elapse before a pedlar can return (with a view to trading) to a location which he has previously occupied with a view to trading; and thirdly, a minimum distance that a pedlar must travel from a location he recently occupied with a view to trading. These limitations, and the exceptions we are proposing to them, are explained in greater detail below.
- 1.21 We propose that a pedlar can remain static in the same location for a maximum of 10 minutes after his arrival there. He should then move on (at a reasonable speed) to a location which is at least 50 metres away from the first location, and again he should remain in that second location for no more than 10 minutes. He cannot immediately return to the first location since he cannot return to a location he has previously occupied within three hours of leaving that location. Nor can he occupy a location within 50 metres of any location he has occupied during the previous 3 hours. These requirements are intended to keep a pedlar trading while on the move.
- 1.22 However, we do recognise that a pedlar may be approached by one or more potential customers during the 10 minute period mentioned above but be unable to conclude the transaction with that customer during that period. Similarly, we recognise that a pedlar may be approached by one or more potential customers while travelling from one location to a location at least 50 metres away. Since we do not want to place unreasonable restrictions on a pedlar's ability to do business, we propose an exception to the above limitations to enable a pedlar who is approached in this way to remain in his location beyond the 10 minute period or to stop to conclude those transactions. Once all such transactions have been concluded (or aborted) the pedlar must continue to move away immediately.
- 1.23 So, if the pedlar is not actively making a sale or being approached by a customer at the 10 minute cut- off point, he must immediately start to move away from the location towards a location at least 50 metres away from that location. If while on the move to his next location, he is approached by a customer, he may stop to deal with that customer. But, as soon as the sale is concluded, he should continue on the move towards his next location (unless, of course, he is approached again by another customer on his way there).
- 1.24 The draft regulations set out how distance is to be measured for the purposes of the 50 metres minimum distance requirement.

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

Regulation 5 – Power to designate streets as licence streets or consent streets

- 1.25 The designation by a council (under paragraph 2(1) of Schedule 4 to the LG(MP)A) of a street as a licence street or a consent street has the effect of making that street subject to the provisions of Schedule 4 to the LG(MP)A. In other words, such a designation makes the street in question subject to an “authorisation scheme” for the purposes of the Directive.
- 1.26 As mentioned above, the Directive allows greater flexibility in relation to authorisation schemes applying to established traders (see Article 9) than in relation to authorisation schemes applying to temporary traders (see Article 16). The possible grounds for justifying the need for a licensing regime are much more limited in relation to temporary traders than in relation to established traders. (Local authorities are already subject to regulations 14 and 24 of the Provision of Services Regulations 2009 (PSR) which implement Articles 9 and 16 of the Directive respectively, so they can already only designate a street as a licence/consent street in relation to established traders if the Article 9(1) requirements are met, and in relation to temporary traders if the Article 16 requirements are met.) So, at least in theory, it is possible that a local authority may in a particular case be able to justify designating a street as a licence/consent street in relation to established traders but not in relation to temporary traders. Since currently the designation of a street may only be made in relation to all categories of street trader, we propose to amend the designation power so that local authorities have (in addition to their current power to designate a street as a licence/consent street in relation to all street traders) the power, if appropriate, to designate a street as a licence/consent street in relation to a more limited category of street trader, namely those who are not temporary traders.
- 1.27 We would welcome views from local authorities as to whether they envisage that there might ever be circumstances in which they cannot justify designating a street as a licence/consent street in relation to temporary traders but can do so in relation to established traders, in other words as to whether such a proposed new power would ever be used?

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?

Regulation 6 – Applications for street trading licences

Electronic applications

1.28 Article 8 of the Directive requires that all procedures and formalities relating to access to a service activity should be capable of being completed by electronic means. So an applicant for a street trading licence needs to be able to submit his application electronically. (We understand that some local authorities already welcome applications made in this way.) However, the reference in paragraph 3(3) of Schedule 4 to an applicant submitting *two* photographs of himself with his application could be seen to cast doubt as to whether an application can be made electronically (since it will not be necessary to attach more than one photo to an electronic application). We therefore propose to amend paragraph 3(3) to remove any doubt that applications can be submitted by electronic means and to ensure that only one photograph need be submitted with an application submitted in this way.

<p>Question 4: Do you agree that only one photo needs to be submitted with street trading applications which are made electronically?</p>
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Mandatory ground for refusing a street trading licence – minimum age

1.29 Paragraph 3(4)(a) of Schedule 4 to the LG(MP)A requires a local authority to refuse to grant a street trading licence to a child under the age of 17 years. We propose to replace this provision with a new mandatory refusal ground. This is because, in view of the existence of the provisions of Part II of the Children and Young Persons Act 1933, we are not currently aware of any reason why it is necessary to impose a minimum age requirement of 17 for the grant of a street trading licence, and we therefore doubt that retention of the existing mandatory refusal ground can be justified as required by the Directive.

1.30 Part II of the Children and Young Persons Act 1933 contains general restrictions on the employment of children (section 18) and specific restrictions on the engagement or employment of children in street trading (section 20). In particular, section 20(1) prohibits a child from engaging or being employed in street trading, and a "child" for this purpose is a person who is not over compulsory school age. A person ceases to be of compulsory school age at the end of the last Friday in June in the school year in which he reaches the age of 16.

1.31 However, there are two exceptions to section 20(1) and these are:

- (i) a local authority has power under section 20(2) to make byelaws authorising children who are 14 years of age or over to be employed by their parents in street trading; and
- (ii) section 35(2) of the Children and Young Persons Act 1963 states that section 20 of the 1933 Act (or any byelaw made under section 20) does not restrict the engagement or employment of any person in the carrying on in any place of a retail

trade/business on any occasion on which it is customary for retail trades/businesses to be carried on in that place.

1.32 We therefore consider that the minimum age requirement in paragraph 3(4)(a) of Schedule 4 to the LG(MP)A (i.e. 17 years old) is set at a higher level than in the 1933 Act. We are not aware of any reason why the 1933 Act might not provide sufficient protection to children in the context of street trading. We are therefore proposing to replace this mandatory refusal ground with a new ground which recognises that restrictions on young persons engaging in street trading are or may be imposed by other legislation. This replacement ground would prevent local authorities from granting a street trading licence to a young person if, were they to engage in the street trading purportedly permitted by the licence, that would result in a contravention of the child employment legislation (either by the young person or by someone else, e.g. someone employing the young person to engage in street trading).

Question 5: Do you agree with this proposal to replace this 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.

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?

Discretionary grounds for refusing a street trading licence

1.33 Under paragraph 3(6) of Schedule 4 to the LG(MP)A, local authorities have a discretion to refuse an application for a street trading licence on one of seven grounds. Our analysis of these grounds against the requirements of the Directive has led us to conclude that one of the grounds (that contained in paragraph (3)(6)(b)) needs to be completely repealed, and that two other grounds (those contained in paragraph 3(6)(c) and (g)) need to be restricted in their use.

I. Paragraphs 3(6)(a) (insufficient space), (d) (applicant's unsuitability), and (e) and (f) (failure to pay fees/charges)

1.34 It is our view that the Directive does not necessitate any amendment to these refusal grounds, since they can be used compatibly with the Directive in relation to both established traders and temporary traders. However, we would welcome views as to whether it would be helpful to consultees if BIS were to issue guidance as to how the PSR may affect a local authority's ability to use some or all of these grounds in relation to established traders/temporary traders.

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

II. Paragraph 3(6)(b) – already enough shops / street traders in the street who are trading in the applicant’s goods

- 1.35 Paragraph 3(6)(b) enables a local authority to refuse an application on the ground that there are already enough traders trading in the street from shops or otherwise in the goods in which the applicant desires to trade.
- 1.36 Our view is that it is extremely unlikely that this refusal ground could ever be used compatibly with the Directive, both in relation to established traders and in relation to temporary traders. As regards temporary traders, we cannot envisage any circumstances in which any of the four possible justifications listed in Article 16 (public policy, public security, public health and protection of the environment) would be the reason for using this ground. As regards established traders, this ground is extremely likely to fall foul of Article 14(5) of the Directive because it involves a case-by-case assessment of the existence of an economic need or market demand. Further, the inevitable effect of refusing a licence on this ground is to protect the business of existing traders in the applicant’s goods. (Protection of competitors cannot qualify as an ORPPI for the purposes of Article 10(2)(b).)
- 1.37 We therefore propose to repeal this ground completely. (If, however, a local authority believes there are circumstances in which this ground could be used compatibly with the Directive in relation to established traders or temporary traders, please let us know with supporting reasons.)
- 1.38 We would welcome views as to whether it is necessary to insert a new refusal ground into paragraph 3(6) to enable a local authority *to refuse a licence application if they are of the view that the street is unsuitable for the trading in which the applicant desires to engage.* (Although such a ground would be drafted in broad terms, like all the other refusal grounds the authority would have to exercise it compatibly with the Directive (by virtue of its obligations under the PSR to comply with the Directive) and so could not use it, for example, in order to protect the business of the applicant’s competitors.) We would also welcome views as to whether it would be helpful for BIS to issue guidance as to how the PSR would affect a local authority’s ability to use this ground in relation to both established traders and temporary traders.

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.

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

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?

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(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?

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

Paragraph 3(6)(c) (applicant wants to trade for too few days each week) and paragraph 3(6)(g) (applicant has failed to use previous licence sufficiently)

- 1.39 Paragraph 3(6)(c) enables a licence application to be refused on the basis that the applicant desires to trade on fewer days each week than the minimum number specified in a resolution by the Council. Paragraph 3(6)(g) enables a licence application to be refused on the ground that the applicant has without reasonable excuse failed to avail himself to a reasonable extent of a previous street trading licence.
- 1.40 In our view, it is very unlikely that either of these grounds could ever be used compatibly with the Directive (Article 16) in relation to temporary traders. However, since we think that it may be possible to use these grounds compatibly with the Directive in relation to established traders, we do not propose to repeal these grounds completely, but to insert a provision which expressly prevents each ground from being used in relation to temporary traders.
- 1.41 We anticipate that some local authorities will not wish to apply a more stringent street trading regime to established traders than to temporary traders (for presentational or possibly practical reasons). Since these grounds are *discretionary* refusal grounds, if a local authority doesn't want to use these grounds in relation to established traders (because it can't use them in relation to temporary traders), it will have the flexibility to choose not to refuse *any* applications on these grounds. We would welcome views as to whether local authorities will continue to use these grounds in relation to established traders or whether it would be preferable to repeal them completely.
- 1.42 We also have difficulty in seeing how the use of the paragraph 3(6)(c) ground can be justified unless there is demand from other would-be traders to trade in the street in question on a greater number of days each week than the number for which the applicant wishes to trade (and the local authority would be prepared to grant a licence to another such trader). Similarly, we have difficulty in seeing how the use of the paragraph 3(6)(g) ground can be justified unless there is demand from other would-be traders to trade in the street in question on the days / times specified in the application (and the Council would be prepared to grant a licence to another such trader). So we propose to insert provisions to prevent local authorities from using these grounds (in relation to established traders) unless these conditions are met.

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?**

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?**

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

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

Preferential treatment for persons previously licensed under local Acts

1.43 In essence paragraph 3(8) of Schedule 4 prevents a licence application from being refused on certain grounds (including lack of space in the street) where the applicant was previously licensed to trade in that street under local legislation and was doing so from a fixed position. So such existing licensees will be in a better position than new applicants for licences. We anticipate that those who will benefit from this provision are more likely to be UK nationals than nationals of other Member States, so we think that this provision is likely to constitute indirect discrimination against traders from other Member States who are seeking to establish here or who wish to provide services here on a temporary basis (in breach of Articles 9(1)(a), 10(2)(a), 14(1) and 16 of the Directive). We therefore propose to repeal paragraph 3(8) of Schedule 4 to the LGMPA.

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

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?

Regulation 7- Duration of street trading licences

1.44 Paragraph 4(6) of Schedule 4 to the LG(MP)A provides that a licence is to remain valid for 12 months from its grant or for such shorter period as is specified in the licence. We propose to amend this provision to ensure that a local authority can grant a licence for a longer period or indefinitely if appropriate.

1.45 This is because, in relation to established traders, Article 11(1) of the Directive (which is implemented by regulation 16(1) of the PSR) precludes an authorisation from being granted for a limited period, except in certain circumstances². Since we do not know whether a local authority will be able to rely on one of the exceptions to the rule that a licence be granted indefinitely in relation to every application it receives from an established trader, we think that authorities should have flexibility to grant licences for longer than 12 months or indefinitely.

² These include that (a) the number of available authorisations is limited by an Overriding reason related to the public interest (ORRPI) or (b) a limited authorisation period can be justified by an ORRPI.

- 1.46 Similarly, since a time limit can only be imposed on a temporary trader's licence if the three stage test in Article 16 is met, we think that local authorities need flexibility to be able to grant licences to temporary traders for longer than 12 months or indefinitely.
- 1.47 However, the European Commission's handbook on implementation of the Directive recognises that, in cases where the number of available authorisations is limited, limiting the duration of authorisations may in many cases be necessary to ensure that all service providers have access to the market on an equal basis. Local authorities need to be careful not to offer long licenses in circumstances where there is excess demand for street trading slots in such a way as to effectively deny newcomers access to the market. So whilst the new paragraph 4(6) will therefore give local authorities flexibility to grant licences to both established and temporary traders for a longer period than 12 months or indefinitely, the Government would expect local authorities to take account of levels of supply and demand when determining the duration of licences. If demand consistently exceeds supply, granting long-term licences might well constitute a market entry barrier to new providers seeking to obtain a licence, but where demand is low, unnecessary restrictions on duration of licences might, for example, be in breach of Article 16 of the Directive.

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?

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?

Question 10.2: (i) Whether you are likely to issue licences for more than a 12 month period or indefinitely?

(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?

Regulation 8 – revocation of street trading licences

- 1.48 Paragraph 5(1) of Schedule 4 to the LG(MP)A enables a local authority to revoke a street trading licence on one of four grounds (which are equivalent to the licence refusal grounds contained in paragraph 3(6)(a), (d), (e) and (g) of Schedule 4).
- 1.49 It is our view that the Directive does not necessitate any amendment to the revocation grounds contained in paragraph (5)(1)(a) (insufficient space), (b) (unsuitability of licence-holder) and (c) (failure to pay fees/charges), since they can be used compatibly with the Directive in relation to both established traders and temporary traders. However, we would welcome views as to whether it would be helpful to consultees if BIS were to issue

guidance as to how the PSR may affect a local authority's ability to use some or all of these grounds in relation to established traders/temporary traders.

- 1.50 We propose to take the same approach in relation to the discretionary revocation ground contained in paragraph 5(1)(d) (failure to use licence sufficiently) as we propose to take in relation to the equivalent discretionary refusal ground contained in paragraph 3(6)(g). The reasons are the same as those set out in paragraphs 1.33 – 142 above.

Questions 11	Would it be helpful for BIS to issue guidance as to how the PSR may affect 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?
Questions 11.1	Do you think there are any circumstances in which the paragraph 5(1)(d) ground could be used compatibly with the Directive in relation to temporary traders?
Questions 11.2	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? Will local authorities continue to use that ground in relation to established traders?
Questions 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?

Regulation 9 - Disapplication of regulation 19(5) of the PSR in certain cases

- 1.51 In essence, regulation 19(5) of the PSR has the effect that, if an established trader's licence application is not processed within the period required by regulation 19, the licence will be deemed to have been granted by the local authority unless there are different arrangements in place. Such different arrangements must be justified by ORRPIs, including a legitimate interest of third parties (regulation 19(6) of the PSR). Schedule 4 to the LG (MP) A does not currently make any such different arrangements.
- 1.52 Since there will remain mandatory grounds for refusing a street trading licence (in paragraph 3(4) of Schedule 4 as we propose to amend it – see paragraphs 1.29 – 1.32 above), we propose to insert a new provision into paragraph 6 of Schedule 4 to the LG (MP)A to automatically disapply regulation 19(5) of the PSR in relation to a licence application where a mandatory ground for refusal of the application applies.
- 1.53 Local authorities may also wish to put in place administrative arrangements disapplying regulation 19(5) of the PSR in relation to licence applications where no mandatory ground for refusal of the application applies (assuming such arrangements can be justified by one or more ORRPIs). Local authorities who do not put in place such arrangements may also wish to specify administratively the conditions that will automatically attach to a street

trading licence which is deemed to have been granted under regulation 19(5) of the PSR (as a result of the application not having been processed in time).

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

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

(ii) to leave it to local authorities to decide whether to put arrangements in place to disapply regulation 19(5) 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.

Regulation 10 - Street trading consents

1.54 We propose to make several amendments to paragraph 7 of Schedule 4 to the LG(MP)A which deals with the street trading consent regime.

Mandatory ground for refusing a street trading consent application – minimum age requirement

1.55 We propose to replace the mandatory refusal ground contained in paragraph 7(3)(a) of Schedule 4 to the LG(MP)A with the same new mandatory refusal ground we propose to replace paragraph 3(4)(a) of Schedule 4 with. Please see paragraphs 1.29 -1.32 above for further explanation.

Disapplication of regulation 19(5) of the PSR in certain cases

1.56 We propose to insert a new provision into paragraph 7 of Schedule 4 to the LG(MP)A to automatically disapply regulation 19(5) of the PSR in relation to a consent application where a mandatory ground for refusal of the application applies. Please see paragraphs 1.51 – 1.53 above for further explanation.

Extension of power to relax prohibition on trading from a vehicle or stall etc (in paragraph 7(7) of Schedule 4 to the LG(MP)A)

1.57 Paragraph 7(7) of Schedule 4 to the LG(MP)A prohibits the holder of a street trading consent from trading in a consent street from a van or other vehicle or from a stall, barrow or cart. Paragraph 7(8) enables the Council to relax this prohibition to permit the holder to trade in a consent street from a stationary van, car, barrow or other vehicle, or from a portable stall. We think a local authority needs to be given the power to relax the prohibition more widely. When granting a street trading consent to a temporary trader, a local authority will need (by virtue of regulation 24 of the PSR) to apply the three stage test in Article 16 to decide whether it needs to relax the prohibition and to what extent. We are proposing amendments to ensure that local authorities have the power to relax the prohibition in paragraph 7(7) in full where it is appropriate to do so.

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?

Duration of street trading consents

1.58 Paragraph 7(10) of Schedule 4 to the LG(MP)A provides that street trading consents cannot be granted for longer than 12 months. As with street trading licences, we propose to amend this provision to enable consents to be granted for a longer period or indefinitely. Please see paragraphs 1.44 -1.47 above for further explanation.

Regulation 11 – offences

1.59 Paragraph 10 of Schedule 4 to the LG(MP)A makes provision about street trading offences. As a result of our proposed changes to paragraph 7(7)-(9) of Schedule 4, we propose to amend paragraph (10)(1)(d) to ensure that a breach of the prohibition in the new paragraph 7(7) is an offence.

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

Chapter 3 - Screening of local street trading Acts in England or Wales against the Directive's requirements, and consequential amendments to other legislation.

Repeals of and amendments to local legislation regulating street trading in parts of England and Wales in order to secure compliance with the Directive

- 1.60 On 5 October 2010 we wrote to local authorities explaining that it was essential for each local authority which has its own local street trading legislation to screen that legislation against the requirements of the Directive (just as we have screened Schedule 4 to the LG(MP)A against the Directive's requirements). We appreciate that many local authorities may have already carried out this screening exercise.
- 1.61 At Annex B we have listed local Acts regulating street trading of which we are aware. (Please can local authorities let us know if any of these have been repealed.) These Acts need to be analysed by the relevant local authorities against the Directive's requirements and conclusions reached by them as to whether amendments/repeals are required in order to secure compliance with the Directive.
- 1.62 In particular, we should be grateful for confirmation from the relevant local authorities as to whether the proposed Regulations should repeal the following provisions for the purpose of securing compliance with the Directive:
- s.74(1)(b)(i) and (2) of the West Sussex County Council Act 1972;
 - sections 67-78 (Part VIII – street trading) of the South Yorkshire Act 1980;
 - sections 34-45 (Part VI – street trading) of the County of Kent Act 1981;
 - all or part of the Nottingham City Council Act 1976;
 - sections 36-47 (Part VII – street trading) of the County of Merseyside Act 1980;
 - sections 82-93 (Part X – street trading) of the Greater Manchester Act 1981;
 - s.29(2)(b) (and other relevant parts of s.29 – see s.29(1), (3), (4), (7), (8) and (9)) of the County of Lancashire Act 1984;
 - Part IV of the County of Avon Act 1982
- 1.63 It is possible that there are other local Acts regulating street trading of which we are not yet aware (and so are not listed in Annex B). Any such Acts also need to be screened by the relevant authorities against the Directive's requirements. We should be grateful if the relevant local authorities would let us know if there are any further local Acts that regulate street trading which are not listed in Annex B.

Implementation options:

1.64 As stated in our letter to local authorities last year if local authorities identify provisions of their local Acts which need to be amended/repealed in order to secure compliance with the Directive, there are two ways in which we think this could be achieved:

i) the relevant local authorities could make the necessary changes themselves by bringing forward a local bill to amend/repeal the relevant provisions of the local Act in question; or

ii) we are prepared to include the necessary repeals/amendments in our proposed regulations, provided that the relevant local authority provides us with **appropriately drafted provisions (i.e. provisions drafted by Parliamentary Agents)** to achieve the repeals/amendments (together with adequate **explanation** as to why those repeals/amendments are needed) no later than the end of the consultation period for this consultation, Friday 15 February 2013 or as otherwise agreed with us. The local authority would also need to provide us with appropriately drafted provisions to achieve any consequential amendments to their local legislation which are required as a result of the repeals/amendments made to secure compliance with the Directive. (If the local authority identifies that their repeals/amendments to secure compliance with the Directive will also necessitate consequential amendments to general legislation, they should let us know what is needed and we will draft any consequential amendments that are needed to general legislation.) We would need to be able to slot the draft provisions straight into our regulations, so as not to hold up the making of the regulations.

1.65 We have offered option (ii) above to local authorities since this may save them the time and expense of promoting a local Bill, as well as saving Parliamentary time. Further, our regulations are likely to be made to a faster timescale than would apply to a local Bill (and using this option would therefore help to ensure that any non-compliant local legislation is made compatible with the Directive sooner).

1.66 Our intention is to include in the Regulations any appropriately drafted provisions provided to us in time by local authorities. (For the avoidance of doubt, we do not intend to amend/repeal local authority *byelaws* in the Regulations – only provisions of local Acts.)

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).

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.

IMPLEMENTATIONS OPTIONS:

If you do wish us to include them in our regulations, please provide us with:

- (a) appropriately drafted provisions to achieve the amendments/repeals and any consequential amendments that are needed to local legislation,
- (b) an explanation of why all those provisions are needed and
- (c) if any consequential amendments are needed to general legislation, an explanation of what is needed

Part 5 of, and the Schedule to, the Regulations - Consequential amendments to other legislation

Consequential amendments as a result of the proposed repeal of the Pedlars Acts

- 1.67 As mentioned above, we propose to repeal the Pedlars Acts. The repeal of the Pedlars Acts will necessitate consequential amendments to provisions of other legislation (i.e. those which refer to the Pedlars Acts or to pedlars' certificates), to ensure that the legislation remains workable.
- 1.68 The Schedule to the Regulations sets out the consequential amendments to general legislation (both primary and secondary) which we have identified as being necessary as a result of this repeal.
- 1.69 We have also identified a number of provisions of local Acts which we think may require consequential amendment as a result of the repeal of the Pedlars Acts. These provisions are listed in Annex C to this document. We need local authorities to tell us what consequential amendments they think are needed to the provisions listed in Annex C as a result of the repeal of the Pedlars Acts, and to provide us with appropriately drafted provisions (i.e. provisions drafted by Parliamentary Agents) to achieve this.
- 1.70 We also need local authorities to tell us if they think that the repeal of the Pedlars Acts necessitates consequential amendments to any other provisions of local Acts not appearing on the list (and again to provide appropriately drafted provisions), or if any of the provisions listed in Annex C have in fact been repealed.
- 1.71 Our intention is to include in our regulations consequential amendments required to local Acts as a result of the repeal of the Pedlars Acts, so that those consequential amendments can come into force at the same time as the repeal of the Pedlars Acts takes effect.

Question 16: Can local authorities tell us

59

(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.

Consequential amendments as a result of the proposed amendments to Schedule 4 to the LG(MP)A

- 1.72 The Schedule to the Regulations sets out the amendments we think are needed to provisions of general (primary or secondary) legislation as a result of our proposed amendments to Schedule 4 to the LG(MP)A.
- 1.73 Our proposed amendments to Schedule 4 to the LG(MP)A may also necessitate consequential amendments to provisions of local Acts. The provisions of local Acts which we believe may require such consequential amendment are:
- Bournemouth Borough Council Act 2010, sections 4 and 5
 - City of Newcastle upon Tyne Act 2000, section 4
 - Leicester City Council Act 2006, section 4
 - Liverpool City Council Act 2006, section 4
 - Maidstone Borough Council Act 2006, section 4
 - Manchester City Council Act 2010, sections 4 and 5
 - Medway Council Act 2004, section 4.
- 1.74 We need the relevant local authorities to tell us what consequential amendments they think are needed to the above provisions as a result of our proposed amendments to Schedule 4 to the LG(MP)A, and to provide us with appropriately drafted provisions (i.e. provisions drafted by Parliamentary Agents) to achieve this.
- 1.75 We also need local authorities to tell us if they think consequential amendments are needed to any other provisions of their local Acts as a result of our proposed amendments to Schedule 4 to the LG(MP)A (and again to provide appropriately drafted provisions).
- 1.76 Our intention is to include in our regulations consequential amendments that are needed to local Acts as a result of our amendments to Schedule 4 to the LG(MP)A, so that those consequential amendments can come into force at the same time as the amendments to Schedule 4 take effect.

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 any other provisions of local Acts as a result of our proposed amendments to Schedule 4 to the LG(MP)A (and again provide appropriately drafted provisions)?

Consultation Questions: England and Wales

Below we set out a variety of questions in relation to our draft set of regulations.

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?

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?

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?

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.

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

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? (paragraphs 1.25 – 1.27)
- Question 4:** Do you agree that only one photo needs to be submitted with street trading applications which are made electronically? (see paragraph 1.28 above)
- 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. (Paragraph 1.32).
- 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?
- 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).
- 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).
- 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)
- 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?
- Question 7.3:** Would it be helpful for BIS to issue guidance on the circumstances in which this replacement ground could be used?
- 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)
- 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?

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

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?
- Question 10.2:** (i) Whether you are likely to issue licences for more than a 12 month period of indefinitely?

(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?
- 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)
- 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?
- Question 11.2:** 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? Will local authorities continue to use that 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?
- Question 12:** Do you foresee any problems with our proposals -

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

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)

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

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).

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.

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.

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 any other provisions of local Acts as a result of our proposed amendments to Schedule 4 to the LG(MP)A (and again provide appropriately drafted provisions)?

DRAFT
STREET TRADING AND PEDLARY LAWS – COMPLIANCE WITH THE
EUROPEAN SERVICES DIRECTIVE

CONSULTATION PAPER FROM THE DEPARTMENT FOR BUSINESS
INNOVATION & SKILLS

Set out below are the responses from Maidstone Borough Council to the above consultation paper and the questions detailed within:-

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

Response 1:
Yes.

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

Response 2:
If there is a need for pedlars the definition set out in the consultation paper appears to be quite effective. However the dimensions of the receptacle which the pedlar can push or pull do seem quite large and in essence are the size of most stalls to which this Council currently gives consent under Schedule 4 of the Local Government Miscellaneous Provisions Act. Additionally the idea of the maximum work time of ten minutes in one location and with the requirement to move fifty metres distance and not return in three hours whilst reasonable as an operation is in this Council’s view difficult to enforce. Also difficult to enforce would be determining what is a reasonable speed. For local authorities to be in a position to enforce this they would require enforcement officers to be on the streets checking on pedlars for long periods of time in order to ensure they are complying with the time and distance requirements of your definition and they would also not be able to use directed surveillance.

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? (paragraphs 1.25 – 1.27)

Response 3:
No.

Question 4: Do you agree that only one photo needs to be submitted with street trading applications which are made electronically? (see paragraph 1.28 above)

Response 4:
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. (Paragraph 1.32).

Response 5: 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?

Response 5.1: This is difficult to answer as applicants know they have to be 17, but based on current figures the interest is likely to be none.

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).

Response 6: Whilst this authority has not adopted the provisions relating to street trading licences, it would be helpful if guidance was issued as suggested in the question.

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).

Response 7: This question relates to street trading licence and this Council has adopted a consent scheme. However, this Council has adopted this ground within its policy as a reason for which it could refuse applications. However, in more recent times, the advice given to the Committee when considering applications has indicated that the Council should not take into account the traders and trade of shops when considering any particular application.

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)

Response 7.1: Yes there could be a product for sale that would be unsuitable to an area.

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?

Response 7.2:

- (i) Rarely but there could be an exceptional case
- (ii) None

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

Response 7.3:

Yes

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)

Response 8:

This Council has adopted a consent scheme rather than the licence scheme and has not used this reason for refusal as part of its scheme.

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?

Response 8.1:

Not relevant.

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

Response 8.2:

Not relevant.

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?

Response 8.3:

Not relevant.

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)

Response 9:

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?

Response 9.1:

Yes I think existing traders under local Acts would be more likely to be UK nationals.

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)

Response 10:

This Council's consent scheme does include paragraph 3(6)(d) as one of its reasons for refusal. If a licence or consent is granted for a period longer than twelve months or indefinitely this reason for refusal becomes

less effective as an applicant could be convicted of an offence and without a regular check it might not be possible to find this particular evidence. Therefore I think it is important that an application is submitted on a regular basis whether that is twelve months or a longer period could be determined. An indefinite period would not be suitable. There could be checks required at intervals rather than just on renewal.

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?

Response 10.1: Potentially negative if the period is too long and pitches are dominated by existing traders.

Question 10.2: (i) Whether you are likely to issue licences for more than a 12 month period of indefinitely?

(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?

Response 10.2:

(i) No.

(ii) Not relevant.

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)

Response 11:

This Council does not operate a licence scheme and therefore has no experience of these revocation grounds but it would be helpful if guidance was issued.

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?

Response 11.1:

Not applicable.

Question 11.2: 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? Will local authorities continue to use that ground in relation to established traders?

Response 11.2:

Not applicable.

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?

Response 11.3:

Not applicable.

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

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

Response 12:

This applies to licences for which this authority has no experience.

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)

Response 13:

This Council sees no problem with the relaxation of the prohibition in paragraph 7(7).

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

Response 14:

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).

Response 15:

The Maidstone Borough Council Act 2006 is included within Annex B and has not been repealed.

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.

Response 15.1:

This Council would like to include an amendment within your regulations. A draft by parliamentary agents is included with this response.

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.

Response 16:

This Council has included with this response consequential amendments required as result of the repeal of the Pedlars Act.

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 any other provisions of local Acts as a result of our proposed amendments to Schedule 4 to the LG(MP)A (and again provide appropriately drafted provisions)?

Response 17:

The consequential amendments required and the appropriate draft provisions are included with this response.

Agenda Item 10

MAIDSTONE BOROUGH COUNCIL

LICENSING COMMITTEE

24 JANUARY 2013

REPORT OF HEAD OF DEMOCRATIC SERVICES

Report prepared by Neil Harris

1. STREET TRADING POLICY

1.1 Issue for Decision

1.1.1 To consider proposals for encouraging street trading under consents granted by MBC, by introducing a change in the fee structure for short term consents to individual traders seeking to trade for only a few days within a year.

1.2 Recommendation of the Head of Democratic Services

1.2.1 That consideration be given to the current fee structure for Farmers Markets being extended to include applications for individual stalls and that the pricing be on the same basis as set out below:-

Up to twelve days - £30.

Thirteen to twenty three days - £185.

Twenty four days and more - £385.

1.2.2 That in light of the significant change to treatment of consent applications which would result from the proposed change in the fee structure set out above that the proposal for change be subject to a 4 week consultation and that the matter is reported back to committee if any objection is received, otherwise the change is implemented from 1 April 2013 by the Head of Democratic Services.

1.3 Reasons for Recommendation

1.3.1 The Council has recently received a number of requests for a consent to street trade for a limited numbers of days within a year or for short periods at specific times of the year such as Christmas. These requests have been received mostly in respect of Jubilee Square and Fremlin Walk but also for other parts of the town.

- 1.3.2 Currently the position is that a consent can be granted for any period not exceeding 12 months. However, any application received to trade on the street, unless it is a farmers market, would be charged in accordance with the set fee for the full year of £385 per annum. It is felt that this has probably deterred applications in the past.
- 1.3.3 It is felt that to encourage this type of enterprise the fee structure for these types of individual applications could be changed to reflect the same fee structure as farmers markets which have reduced fees for number of days per year and to encourage their existence.
- 1.3.4 It is expected that the type of trader applying to use this provision could be a trader wishing to see whether their product would sell within the Maidstone area. Therefore, to apply on this short term basis would allow them to test the market to see if their product would succeed. If successful they could expand the number of trading days for which they wish to hold to one of the higher charging consent fees an annual consent. The application could then be charged for a 12 -23 consent at £185 minus the £30 already paid or an annual consent the full fee of £385 minus the £30 already paid etc. It is felt that this would encourage new people to try their business in the Maidstone area which could help to introduce a vibrant street atmosphere.
- 1.3.5 Whilst the proposal relates to a change in fee structure it is felt that it is a significant change to the treatment of consent applications which before implementation should be subject to consultation with our normal street trading consultees, Councillors, trader bodies and on the website for public comment. It is the intention that I would report back to committee if an objection is received during the consultation period or implement the fee change from 1 April 2013 should no objection be so received.

1.4 Alternative Action and why not Recommended

- 1.4.1 If it was decided to make no changes to the current fee structure, new traders would be forced to take out a full annual consent to trade lawfully, which could deter them from applying. Additionally whilst this does not relate to pedlars the legislation being proposed in the BIS Consultation paper will amend the Council's Street Trading Consent Policy.

1.5 Impact on Corporate Objectives

- 1.5.1 It is felt that a change in the fee structure could encourage new business into the area, thereby helping to create a more vibrant economy in the Maidstone area and supporting local business/traders.

1.6 Risk Management

1.6.1 There are no particular risks with regard to this change in fact it will hopefully encourage new business to the area. The processing of an application, other than fee charged, will not change.

1.7 Other Implications

1.7.1

1. Financial	X
2. Staffing	
3. Legal	X
4. Equality Impact Needs Assessment	
5. Environmental/Sustainable Development	
6. Community Safety	
7. Human Rights Act	
8. Procurement	
9. Asset Management	

1.7.2 It should be noted that the cost of administrating the £30 fees is more than the cost of issuing the consent but this should be weighed up by the encouragement given to new businesses. Additionally there will be no significant financial implications because of the increased number of applications received leading to more full applications and less applications being aborted and the fee needing to be refunded. (Iam not sure that this argument entirely works as each fee pays for itself with no profit element, so increased applications do not make up a shortfall, although reduced refunds would). The fee of annual licences will not be increased to make up any shortfall.

1.7.3 Legal implications are dealt with in the report.

1.8 Relevant Documents

Current Street Trading Consent Policy

1.8.1 Appendices

IS THIS A KEY DECISION REPORT?

Yes

No

If yes, when did it first appear in the Forward Plan?

.....

This is a Key Decision because:

.....

Wards/Parishes affected:

.....

1.8.2 None.

1.8.3 Background Documents

1.8.4 None.

Agenda Item 11

MAIDSTONE BOROUGH COUNCIL

LICENSING COMMITTEE

24 JANUARY 2013

REPORT OF THE HEAD OF DEMOCRATIC SERVICES

Report prepared by Neil Harris

1 SEXUAL ENTERTAINMENT VENUE 87-88 BANK STREET

- 1.1 On 22 October 2012 the Committee considered an application by Century Buildings (Rochester) Ltd, for a Sexual Entertainment Venue licence for part of premises at 87-88, Bank Street, Maidstone, a copy of the minutes of that meeting are attached on the agenda. The application was refused on grounds from which the only method of appeal is by way of judicial review.
 - 1.1.1 On 19 November 2012 an email was received sent on behalf of the applicant, which is attached to this report. It was requested that the Committee reconsider their decision and grant the application, on the basis that possibly, "there was a lack of clarity to the proposed location of the SEL on the first floor within the property and the access to this area". It was indicated that the applicant had instructed Philip Kolvin Q.C. and was considering whether to proceed to judicial review but was seeking reconsideration before incurring the costs and time involved in that process.
 - 1.1.2 It was the view of the Committee's legal adviser that there is no power for the Committee to reconsider such a decision once made and issued. A further opinion was sought from Counsel and it was confirmed that this is the case, once a statutory decision is completed there is no power within this Act for reconsideration and that course would be unlawful and contrary to the proper administration of local authority regulatory decision making . A response indicating this was sent to the applicant is attached to this report. The applicant was informed that the Committee would be advised of his request and its rejection.
- 1.2 **RECOMMENDED:**
 - 1.2.1 That the report be noted.

From: Ross Hutchins [ross@rhjp.net]
Sent: 19 November 2012 14:10
To: Jayne Bolas
Subject: SEL Application 87-88 Bank Street Century Buildings (Rochester) Limited

Importance: High

Dear Ms Bolas,

It has come to my attention that there is to be a licensing committee meeting soon and wished to ask if this email could be brought to the attention of the committee members.

Since the refusal of our application for an SEL for the part 1st floor of 87-88 Bank Street, Maidstone we have sought further legal advice from an alternative barrister from that which was representing us during the hearing.

During the hearing and having now reviewed the minutes and the decision we felt possibly that there was lack of clarity to the proposed location of the SEL on the first floor within the property and the access to this area.

We have now instructed Mr Philip Kolvin QC who has reviewed the case for the consideration to request a Judicial Review.

Having received his findings we are now at a key decision making point to proceed. From the advice of Mr. Kolvin, it is suggested that we liaise with the licensing committee to ask for reconsideration of the original decision to ask for the granting of the requested license.

I am aware that if we choose to proceed down this route of a Judicial Review there could be substantial economic cost for both parties with this time absorbing process. For all involved and would look to avoid this where possible hence we respectfully hope that committee can give consideration to our request.

Yours Faithfully,

S.R Hutchins
Century Buildings (Rochester) Limited

SEV Application, 87-88, Bank Street – Century Buildings (Rochester) Ltd.

Dear Mr. Hutchins,

Further to your email of 19, November 2012, on behalf of Century Buildings (Rochester) Ltd, I have now had the opportunity to consider the points raised.

(i) Location Point

I have carefully read your application, the agenda report and appendices, the minutes and the decision notice. I cannot see any evidence of a possible, “lack of clarity to the proposed location of the SEL on the first floor within the property and the access to this area”.

The decision notice is clear; members were aware of the specific location and entrance to your premises and took this into particular account in their determination. Indeed, when considering the character of the vicinity members took note of the particular circumstances of your premises noting: “even one [SEV] on the first floor, with a side entrance.”

Equally it appears that your location point was made very clear on multiple occasions and certainly covered fully by yourself and counsel at the hearing in opening and summing up your case.

(ii) Reconsideration of Decision

I am surprised that Counsel has advised you to request that the decision be reconsidered by the licensing committee – I too have sought preliminary advise from Counsel. The Local Government (Miscellaneous Provisions) Act 1982 makes no provision for the reconsideration of a decision as you suggest in your e-mail.

The committee has made a final and conclusive determination of your application. This determination has been communicated to yourself, the police authority and local objectors in a final and conclusive form. It has also been reported as such in the local press. It is self-evident that your request seeks to undermine the principle of legal and administrative certainty.

The local authority has made a proper and final determination on your application; this determination is valid vis-à-vis all the parties and also upon the decision maker itself.

(iii) Report to Committee

The next meeting of the Licensing Committee is on 24, January 2013. The licensing committee will be informed of your request. They will be advised that the course you suggest to them is unlawful and contrary to the proper administration of local authority regulatory decision making and that, upon legal advice, it has been rejected.

(iv) Costs & Judicial Review

The Licensing Authority is aware of the time and costs involved in defending a Judicial Review. Like yourself, we are committed to avoiding unnecessary costs, both in time and expenditure, where this is possible. In the event that these matters (Location & Reconsideration) are raised in subsequent proceedings, we expressly reserve the right to refer the courts to this correspondence in respect of such future costs or as may be otherwise appropriate.

Yours sincerely

Jayne Bolas

MAIDSTONE BOROUGH COUNCIL

LICENSING COMMITTEE

24 JANUARY 2013

REPORT OF THE HEAD OF DEMOCRATIC SERVICES

Report prepared by Neil Harris

1. DRESS CODE FOR HACKNEY CARRIAGE AND PRIVATE HIRE DRIVERS

1.1 Issue for Decision

1.1.1 To consider at the request of some Members the introduction of a dress code for hackney carriage and private hire drivers.

1.2 Recommendation of Head of Democratic Services

1.2.1 That the Head of Democratic Services consult with the Hackney Carriage Association, the representatives of Private Hire Operators and individual drivers about the introduction of a voluntary dress code on the basis of the draft as set out in Appendix 1 to the report.

1.3 Reasons for Recommendation

1.3.1 The issue of a dress code for hackney carriage and private hire drivers has been raised by some Members. It was considered that the current standard of dress of some drivers was inappropriate on occasion with some of the drivers attired in unsuitable T-shirts, shorts and footwear. This was considered to be unacceptable particularly as these drivers are often the first point of contact for people coming into Maidstone.

1.3.2 The Council has not received any specific complaints but has received a number of comments about the dress of the Hackney Carriage drivers. Additionally, this issue has been raised by Members of the Committee who may have received complaints.

1.3.3 The Committee has recently considered the Law Commission's consultation paper on hackney carriage and private hire services in which it is proposed that new conditions for hackney carriage and private hire will be set nationally. These may include a dress code or give the Council an option to add it as part of its own local provisions but it is quite possible that for private hire it could relate to safety

only. However it is not certain when this will be completed but it is expected that draft legislation will be produced in 2014. Members are also referred to legal advice regarding the introduction of a dress code set out in the exempt appendix to the report.

1.3.4 Therefore, it is proposed that the Council seeks to agree a voluntary code with the Hackney Carriage Association, representatives of the Private Hire Operators and individual drivers for adoption by the Council. Having a voluntary agreement with the Association and the Operators is considered to put the Council in a better position to achieve a more appropriate standard of dress.

1.3.5 It is proposed a draft dress code as attached to this report is consulted on with the Hackney Carriage Association, Private Hire Operators and individual drivers and that a report is brought back to the Committee on the outcome of these discussions.

1.4 Alternative Action and why not Recommended

1.4.1 It could be decided not to proceed with any action in this matter, which would do nothing to improve the current standards of dress by some drivers which were the cause of concern.

1.5 Impact on Corporate Objectives

1.5.1 Introducing a dress code to ensure a consistent standard supports the council's objective of corporate and customer excellence of a service provided in the borough.

1.6 Risk Management

1.6.1 There are no significant risk management issues arising from this report.

1.7 Other Implications

1.7.1

- 1. Financial
- 2. Staffing
- 3. Legal
- 4. Equality Impact Needs Assessment
- 5. Environmental/Sustainable Development
- 6. Community Safety

X

- 7. Human Rights Act
- 8. Procurement
- 9. Asset Management

1.7.2 The legal implications are detailed in the Exempt Appendix.

1.8 Relevant Documents

1.8.1 Appendices

1.8.2 Appendix 1 – Draft dress code.

1.8.3 Background Documents

1.8.4 None

<u>IS THIS A KEY DECISION REPORT?</u>	
Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>
If yes, when did it first appear in the Forward Plan?	
.....	
This is a Key Decision because:	
.....	
Wards/Parishes affected:	
.....	

DRAFT DRIVERS' DRESS CODE

The purpose of a Drivers' Dress Code is to seek a minimum standard of dress that provides a positive image of the hackney carriage and private hire trade in Maidstone, enhances a professional image of licensed drivers and ensures that public and driver safety is not compromised.

Acceptable Standards Of Dress

- Shirts, blouses, T-shirts or sweat tops should cover the shoulders and be capable of being worn inside trousers or shorts.
- Shirts or blouses may be worn with a tie or open necked.
- A skirt or shorts of knee length, or trousers may be worn.
- Footwear for all drivers shall fit around the heel of the foot.

Unacceptable Standard Of Dress

The following are deemed unacceptable:

- Clothing not kept in a clean condition, free from holes and rips.
- Words or graphics on any clothing that is of an offensive or suggestive nature or which might offend.
- Sportswear (e.g. football/rugby kits, track suits or beach wear etc.)
- Sandals with no heel straps, flip flops or any other form of footwear not secured around the heel.
- Drivers not having either the top or bottom half of their bodies, or both, suitably clothed (see above).

By virtue of paragraph(s) 5 of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is Restricted

By virtue of paragraph(s) 5 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted