

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.