

**Responses to BIS and Scottish Government Consultation on
Modernising Street Trading and Pedlars Legislation - Local authority
responses O to S**

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OLDHAM COUNCIL

Date: 1st February 2010
Our ref: JG
Your ref:

22nd February 2010



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Dear Sirs.

Street Trading and Pedlary Consultation

Please find below the response, from Oldham Council Licensing department, to the joint consultation on modernising Street Trading and Pedlar Legislation and draft guidance on the current regime.

CERTIFICATION PROCESS

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

Yes

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

In the second limb of the proposed definition the term 'reasonable distance' should be more clearly defined as in its current form it will be open to interpretation by both officers and trade.

Term 'avoid' is open to interpretation and may provide pedlars with a defence when accused of standing still between sales when trading.

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

Yes.

Pedlars currently use a wide range of trolleys not only to transport their goods but as a means of displaying the goods they are selling. The size of these trolleys range from small 2 wheeled carts right through to the industrial cages used by supermarkets. The sheer size of some of the

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trolleys along with the amount of goods that are displayed make them very difficult to move and manoeuvre around busy town / city centres this invariably leads to the pedlar remaining in a stationary position thus acting as a street trader. Trolleys should be restricted to size

Size (H)100, (W)47, (D)64cm / (H)39.3, (W)18.5, (D)25.2in. which is similar to the following type of trolley



4. Do you have alternative suggestions? Please provide them.
No

5. In your view, will updating the certificate as described above make verification and identification of lawful pedlars easier for enforcement officers?

Yes

A standardised format for the pedlar's certificate will enable enforcement officers to quickly ascertain if the certificate is genuine, and obtain the pertinent information more easily.

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

No

Certificate should have date of issue, Schedule of any offence committed under the Pedlars Act and / or Street Trading Legislation. As well as contact details for the issuing authority it should also include the stamp / seal of that authority.

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This will enable enforcement officers to quickly ascertain if the certificate could potentially be a forgery or not, having the offence listed will give enforcement officers access to the pedlars previous history at a glance.

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

Yes

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

Yes

A national database would assist in the verification of a pedlar's certificate.

9. With reference to section 6 of this document would you support the reintroduction of certification for pedlar service providers? If so, please say why and provide any evidence in support of your view. If not, please say why.

No

10. Do you think the proposed criteria will offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a certificate?

Yes

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

Yes

12. In your view, should responsibility for issuing pedlars certificates be transferred from the police to local authorities?

Yes

Licensing authorities already have the expertise and systems in place to issue varying types of licences.

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

Yes

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

I don't think it will affect activities too much. It brings in a clear and accountable regime challengeable in the courts.

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

Yes

Under the Licensing Act 2003 a Local Authority issues a personal licence to those wishing to be authorised to sell alcohol under that Act. This licence is valid nationwide yet is issued by the Local Authority of where the applicant normally resides. To our knowledge this system works with relative few problems.

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

No. A database though is essential.

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

This option would appear, on the face of it to be the simplest solution, however the amended legislation would need to be carefully drafted to ensure that the 'exempted defined modes of trading' and the 'specific conditions under which the local authority could modify the exemptions' do not prove a loop hole for pedlars, and to ensure that the act of pedlary does not creep into the realms of street trading.

ENFORCEMENT

18. Which of the above options do you favour?

Option D

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19. Should Local Authority Enforcement Officers be given powers to:-

- i) issue fixed penalty notices
- ii) seize goods, with forfeiture by order of the court

Please give reasons for your answer

Issuing of fixed penalties provides a quick and effective means of dealing with offences. It reduces the financial burden on taking prosecution, and the seizure of goods provides an instant deterrent to illegal traders.

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

The powers outlined in the report are reasonable. A power to prosecute should also be available where a previous fixed penalty has not acted as a deterrent.

21. Is the list of offences in respect of FPN's complete and correct? If not, please state which offences you would add or take away, and why?

Yes

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

£80 reduced for early payment to £60.

23. Do you agree with the Departments general perception, as set out above? If not, please explain.

Yes

24. Do you agree that if provision for more enforcement options against illegal street trading and a sufficient demarcation between legitimate pedlary and other street trading was established (along the lines discussed elsewhere in this document) that this would address the issues of concern to some local authorities in relation to unfair trading and competition? If not please explain?

Yes

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25. Do you agree that the list above illustrates the circumstances, restrictions on the number of legitimate pedlars in specified areas and at specified times are justifiable? If not please explain why you do not agree?

Yes

26. Do you agree that the list above illustrates the circumstances under which restrictions on numbers is justifiable? Do you disagree with any of the listed circumstances, if so why? Would you add any circumstances to the list, if so, which and why?

Yes but we would like to add provisions for restrictions on specific days of the week. This would enable Authorities to restrict the number of traders on peak trading days such as Saturdays.

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

No

28. Should street trading appeals in London be determined by the Magistrates' Court or the Secretary of State? Please give reasons for your answer.

N/A

SERVICE DIRECTIVE

29. If you are aware of any evidence to suggest that the conclusions set out above do not reflect the actual position either in respect of our perceptions of numbers of pedlars of services only or in respect of our understanding of the requirements of the services directive, please provide it. Note that a pedlar of goods and services will need to be certified in order to trade as a pedlar of goods.

DRAFT GUIDANCE

30. Is the checklist at the front of the guidance an adequate one-page summary detailing what legal street selling looks like? Please give reasons for your answer including anything you would like to see added or removed.

Yes

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The check list appears to cover all aspects of pedlary that have been considered by the Courts.

31. Do you think the draft guidance meets the needs of the target audience, i.e. enforcers and traders, including pedlars? Please give reasons for your answer

Yes

Guidance is clear and concise, and covers all aspects of the current street trading and pedlary regimes.

32. Do you have any suggestions for amendments to the guidance? If so please specify how the guidance might be formatted, added to or subtracted from, and why.

No

33. If you have any other comments or observations, in particular any information on possible costs relating to the options (see Impact Assessment), we are happy to receive them as well.

None.

Yours faithfully

A handwritten signature in black ink, appearing to read "John Garforth".

John Garforth
Principal Licensing Officer
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OXFORD CITY COUNCIL

Please find attached reply to the above consultation on behalf of Oxford City Council.

Many Thanks

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London SW1H 0ET

12 February 2010
Our ref: AP/ Lic
Your ref:

Dear Sir / Madam

Consultation on Street Trading and Pedlar Laws:

I wish to submit the following comments on behalf of Oxford City Council in response to the consultation on modernising street trading and pedlar legislation, and on draft guidance.

Certification Process

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

Yes

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

The definition needs to take into account other types of “trade” such as canvassing for charity sign up by direct debit and energy suppliers

Question 3: Do you think the permitted size of a trolley should be set out in the definition. Please provide reasons for your answer and an indication of any size you think appropriate.

Yes, as larger trolleys can be difficult to manoeuvre by the pedlar and can cause an obstruction. 0.5m by 1m should be the maximum.

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

No.

Question 5: In your view, will updating the certificate as described above make verification and identification of lawful pedlars easier for enforcement officers? Please give reasons for your answer.

Yes, this should make verification and identification of lawful pedlars easier. We agree that pedlars' certificates should have a national format including photo identification.

We support a national database, although it should be funded by central government or from fees.

Question 6: In your view, is the list of information to be included in a modified certificate complete? If not, please state what information you believe should be added/removed and why.

Suggest adding date and place of birth.

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

Yes

Question 8: Do you agree that the list of information to be held on the database is complete and correct? If not, please state what information you would remove/add and why.

Yes, if date and place of birth is added to the certificate.

Question 9: Would you support the reintroduction of certification for pedlar service providers? If so, please say why and provide any evidence in support of your view. If not, please say why.

Yes, to provide controls over services such as henna tattooing and hair braiding etc which can proliferate particularly on tourist locations.

Question 10: Do you think the proposed criteria will offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a certificate?

Yes.

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

Yes

Question 12: In your view, should responsibility for issuing pedlars' certificates be transferred from the police to local authorities? Please give reasons for your answer.

Yes, because of the links with street trading legislation although the fee charged needs to be adequate for councils to be able to recover their costs.

Question 13: Do you think that clear terms for refusal of applications in the legislation, coupled with a right of appeal, are sufficient safeguards to ensure a fair and non-discriminatory certification regime? If not, what alternative or additional safeguards do you think are required?

Yes.

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

Support the option as one piece of legislation for street trading and peddling will simplify matters.

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

Yes.

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

Including pedlars in street trading legislation would have the advantage of providing a consistent approach should certification of pedlars be transferred to councils.

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

Revoking the pedlars' legislation would hinder councils and the police and when dealing with itinerant trading.

Enforcement

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

Question 19: Should Local Authority Enforcement Officers be given powers to: issue fixed penalty notices seize goods, with forfeiture by order of the Court? Please give reasons for your answer.

FPN and seizure powers will strengthen the tools for dealing with illegal trading and will act as a deterrent.

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

With a wider range of sanctions then councils will be better placed to take a proportionate approach to enforcement. Currently prosecution is the only option for what may be seen as a relatively minor offence.

Question 21: Is the list of offences in respect of FPNs complete and correct? If not, please state which offences you would add or take away, and why.

It appears to be complete and correct.

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

Suggest £80 reduced to £55 if paid within 10 days.

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

It seems reasonable.

Question 24: Do you agree that if provision for more enforcement options against illegal street trading and a sufficient demarcation between legitimate pedlary and other street trading was established (along the lines discussed elsewhere in this document) that this would address the issues of concern to some local authorities in relation to unfair trading and competition? If not, please explain.

Yes.

Question 25: Do you agree that, in some circumstances, restrictions on the number of legitimate pedlars in specified areas and at specified times are justifiable? If not please explain why you do not agree.

It would help to ensure that pedlars do not have an adverse impact on other businesses in the area and will enable councils to regulate numbers in popular areas such as tourist locations or busy shopping streets..

Question 26: Do you agree that the list above illustrates the circumstances under which restriction on numbers is justifiable? Do you disagree with any of the listed circumstances, if so why? Would you add any circumstances to the list, if so, which and why?

Yes, particularly in conjunction with events that draw large crowds.

Question 28: Should street trading appeals in London be determined by the Magistrates' Court or the Secretary of State? Please give reasons for your answer.

No comment.

Services Directive

Question 29: If you are aware of any evidence to suggest that the conclusions set out above do not reflect the actual position either in respect of our perceptions of numbers of pedlars of services only in respect of our understanding of the requirements of the services directive, please provide it. *Note that a trader of goods and services will need to be certified in order to trade as a pedlar of goods.*

We are not aware of any evidence.

Draft Guidance

Question 30: Is the checklist in the front of the guidance an adequate one-page summary detailing what legal street trading looks like? Please give reasons for your answer including anything you would like to see added or removed.

The checklist should say that moving up and down the same street is not moving from place to place and is therefore unlawful.

Question 31: Do you think the draft guidance meets the needs of the target audience , i.e. enforcers and traders, including pedlars? Please give reasons for your answers.

The guidance is primarily concerned with pedling and has little guidance on street trading. For example, the circumstances suited to designating "Consent Street", "Licence Street", or "Prohibited Street", criteria for determining applications for a consent or licence, and the role of other stakeholders such as the police, trading standards, or highways authority.

Question 32: Do you have suggestions for amendments to the guidance? If so please specify how the guidance might be reformatted, added to or subtracted from, and why.

See answer to Q 31 above.

Question 33: If you have any other comments or observations, in particular any information on possible costs relating to the options (see Impact Assessment), we are happy to receive them as well.

Oxford City Council welcomes the proposals to update the pedlar and street trading legislation. Any new provisions should be self financing through the level of fee set. Councils are free to set a reasonable fee for street trading licences or consents to ensure they can recover the cost of operating the scheme. The same should apply to Pedlars Certificates if transferred to councils.

Yours sincerely

John Copley
Head of Environmental Development

PLYMOUTH CITY COUNCIL

Good morning,

Please find attached the views of Plymouth City Council in respect of Pedlars and Street Trading.

<<Pedlars Consultation (2).doc>>

Regards

Kathy Davey

Kathy Davey
City Centre Operations & Street Trading Manager
City Centre Company
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Plymouth City Council's response to the consultation being undertaken by the Department for Business, Innovation and Skills in respect of possible legislation change to Street Trading and Pedlary Laws

Plymouth City Council regulates street trading under the provisions of the Local Government (Miscellaneous Provisions) Act 1982.

In Plymouth city centre certain streets have been designated 'Prohibited Streets' where street trading (with the exceptions of news vending) is totally prohibited and other 'Consents Streets' where street trading is permitted only with the consent of the council.

The process is managed through a Licensing Committee (Miscellaneous) with delegated authority given to a dedicated officer (Street Trading Manager) who manages on street activities. The Street Trading manager reports back to the committee and seeks advice and guidance when necessary.

This report has been compiled from the day to day observations of the Street Trading Manager, the views of the Licensing Committee and answers to the questions provided by BSI

Observation of Street Trading Manager

Plymouth city centre attracts large numbers of pedlars on late night shopping evenings leading up to Christmas, school holidays and when there is a large event, food festival or craft market. Although it is accepted that certain pedlars add to the vibrancy of the street scene, particularly at Christmas, pedlars frequenting Plymouth city centre do not act as pedlars, use oversized trollies that obstruct the highway, block access in high footfall areas, present a health and safety risk, trade in streets that are prohibited to legitimate consent

street traders, move only a few feet at a time in the same area and only move when asked to do so.

The Street Trading manager works closely with the city centre police team who assist in enforcement and who also 'manage applications' for a pedlar licence from local people. However the vast majority of pedlars who frequent the city centre are not from Plymouth . This presents a huge strain on available resource, constantly dealing with complaints from legitimate traders and moving pedlars on.

Points raised by the Licensing Committee that may not have been fully answered or included in questionnaire.

- with regard to proposals to bring this under the Local Authority umbrella, Plymouth City Council would wish to see powers to confiscate unlawful trader's goods without the need to attend a court action, which is recognised as being costly.
- concerns were raised as to whether local authorities would have access to criminal records if this was taken away from the police to licence.
- As a result of this, it was requested that some sort of CRB check should be undertaken as part of the process, with a requirement for regular renewal of the CRB check upon licence
- The requirement that any new legislation should comply totally with EU legislation.
- Clarification of whether people selling services and not actual goods would fall under the same licensing regime.
- Requirement for particular sites for trading to be set up under this new legislation.

4. CERTIFICATION PROCESS

4.1. Pedlars and the Pedlars Act

The Options

48. Option B

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

Yes

49. Possible New Definitions

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

Remove '*May use a small means of transporting goods e.g. trolley to carry stock*'. The use of trolleys enables the pedlar to 'set up stall', it is then that this becomes street trading without a consent, resulting in complaints from legitimate street traders and inducing the need for enforcement officers to act. The pedlar will move on when asked to do so, only to set up stall again once the officer has left the scene; resulting in the officer being called out again to deal with the same issue. This is an enormous strain on available resources.

Trolleys are always too large, often causing an obstruction on the highway and very often overloaded making it very difficult to move and a risk to the public.

Question 3. If it is agreed that trolleys are permitted, perhaps size could be more specific, it could be recommended that trolleys should be of similar size and design to that of supermarket trolley and no larger

Question 4. Alternative suggestion.

Pedlars should only be able to sell goods that they can carry in a suitable receptacle such as that similar to those previously used in cinemas to sell ice-cream and pop corn or a large holdall. The majority of pedlars travel by vehicle to their chosen destination and park vehicles close to where they intend to operate. The pedlar could return to his vehicle (as he often does for the parking meter) and re-stock his carrying receptacle. The pedlar would not have the opportunity to set up his trolley as a stall and could move freely about his chosen location, without causing an obstruction, peddling as the act intended from 'door to door'.

4.2. The Pedlars Certificate

Question 5. In your view will updating the certificate as described above make verification and identification of lawful pedlars easier for enforcement officers?

Yes. Photograph of holder – self explanatory. National Insurance Number – could assist with benefit fraud and foreign nationals.

4.3. National Database of Pedlars

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

Yes.

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

Yes.

Question 9. With reference to section 6 of this document, would you support the re-introduction of certificates for pedlar service providers? If so, please say why and provide any evidence in support of your views. If not, please say why.

4.4. Grant of Certificate – ‘Person of Good Character’

Question 10. Do you think the proposed criteria will offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a certificate?

Yes

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

Yes

4.5. Issuing Authority for Pedlars Certificates

Question 12. In your view, should responsibility for issuing pedlars certificates be transferred from the police to local authorities?

To be debated. On the positive, this would fall in line with other street trading activities. On the negative, more pressure on authority to carryout criminal checks; no support from police in respect of enforcement; cost implications.

Question 13. Do you think that clear terms for refusal of applications in the legislation, coupled with a right of appeal are sufficient safeguards to ensure a fair and non-discriminatory certification regime? If not, what alternative or additional safeguards do you think are required?

Sufficient safeguards in place.

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

Options 78

Revoking Pedlars Act and Licensing Pedlars under the Local Government (Miscellaneous Provisions) Act 1988 (LG(MG)A) and Civic Government (Scotland) Act 1982.

Revoking the Pedlars Act and excluding pedlar activity from street trading regulation except in specific, defined circumstances.

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

To be debated.

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

To be debated.

Question 16. Are there other ways of maintaining the national access to pedlar certificates other than the pedlars act?

To be debated.

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

To be debated.

5. ENFORCEMENT

5.1. Enforcement options for street trading and pedlary offences.

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

Option D.

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

- 1) Issue fixed penalty notices?
- 2) Seize goods, with forfeiture by order of the court?

It is considered that the Local Authority Enforcement Officers should be given powers to enforce either of these options as appropriate. As found in the Durham survey, it is often too costly to bring a prosecution under the present law given the outcomes, e.g small fine imposed by the Magistrates Court. Enforcement could be more robust if these powers were given to Enforcement Officers.

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

Question 21. Is the list of offences in respect of FPNS complete and correct? If not, please state which offences you would add or take away and why.

The list of offences in respect of FPNS seems to be complete and correct

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

This should be set at a level to deter the trade without the relevant licence and not too low to be seen as an acceptable overhead.

5.2. Power to impose restrictions on certificated pedlar activity

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

Generally speaking yes, however in Plymouth City Centre 99% of pedlars do not trade within the terms of the Pedlars Act.

Question 24. Do you agree that if provision for more enforcement options against illegal street trading and a sufficient demarcation between legitimate pedlary and other street trading was established (along the lines discussed elsewhere in this document) that this would address the issue of concern to some local authorities in relation to unfair trading and competition? If not please explain.

Yes

Question 25. Do you agree that, in some circumstances, restrictions on the number of legitimate pedlars in specific areas and at specified times are justifiable? If not please explain.

Yes

Question 26. Do you agree that the list above illustrates the circumstances under which restriction on numbers is justifiable? Do you disagree with any of the listed circumstances, if so why? Would you add any circumstances to the list, if so, which and why?

I would include distance along with restricting number of pedlars i.e. a reasonable distance away from Craft Fairs and Markets who may well have paid a large amount of money to trade in a specific area.

Question 27. Do you have any observations in relation to the ideas aired in the final paragraph of methodology and notice?

This could vary from area to area i.e. would need to suit individual councils street trading policies.

6. SERVICES DIRECTIVE

Question 29. If you are aware of any evidence to suggest that the conclusions set out above do not reflect the actual position either in respect of our perceptions of number of pedlars of services only, or in respect of our understanding of the requirements of the service directive, please provide it. Note that a pedlar of goods and services will need to be certified in order to trade as a pedlar of goods.

In Plymouth city centre we experience difficulties with traders selling services such as 'paintballing' setting up stall and only moving when 'harassed'.

7. DRAFT GUIDANCE

Question 30. Is the checklist at the front of the guidance an adequate one-page summary detailing what legal street selling looks like? Please give reasons for your answer including anything you would like to see added or removed.

No. Lawful pedlary and unlawful pedlary contradict one another i.e. Lawful states that you can use a trolley whilst unlawful states, do not use large trolleys. The pedlars act envisages a pedlar carrying his goods (one of the most important differences between a street trader and a pedlar).

The statement, '*you can use a trolley*' should be removed as this is where most of the confusion and misinterpretation lies, resulting in pedlars not acting as pedlars but '*setting up a stall*' and then street trading without a consent.

The statement you must move around to trade – keeping a reasonable distance from your last sales position...should be more specific as this is also greatly misinterpreted. Pedlars target high footfall areas e.g. outside the entrance to a shopping centre and move only a few feet to and fro the same spot. This is unfair competition for those businesses in the vicinity as the pedlar will spend the entire day outside of their business.

Moving around to trade must be clearly defined e.g. a pedlar travelling from door to door does not target houses no 1-4 in any quiet area repeatedly throughout the day but would select streets and target all the houses in those streets.

The use of a trolley and the interpretation of moving around is enabling and encouraging the 'pedlar' to act unlawfully.

READING BOROUGH COUNCIL

Dear Ms Hussain and Mr Dennison,

Having read and fully discussed your consultation document in relation to the above, I forward herewith the response from Reading Borough Council. As you will no doubt be aware, Reading is currently seeking its own 'Bill' to deal with the continuous and increasing problem of pedlars who act as unlawful street traders.

Reading is the County Town of Berkshire. It is currently the third most diverse and one of the most cosmopolitan and dynamic communities in the South East. It lies at the heart of the Thames Valley, and is widely regarded as the 'Silicon Valley' of the UK. Over the last 10 years, Reading has also benefited from being one of the fastest and sustained economies in the country. Whilst the recent economic downturn has had an impact, it has been to a lesser degree than some areas of the country. It is still home to 13 of the world's top 30 global brands, with the likes of Prudential, Microsoft and Oracle all based locally.

Whilst the borough of Reading is also home to around 145,000 residents, the wider urban area has a population of around 275,000 with an even broader retail 'catchment area' of over 1.2m. This is a significant aspect of the Reading of today: a sub-regional capital, attracting large numbers of workers, shoppers and visitors from a wide area, adding to its vitality and success.

With the M4 motorway only a short distance away and three separate access points to choose from, vehicular access to London, the South Coast and the West of the country is also readily available. At present, Junction 11 of the M4 motorway is undergoing multi million pound improvements and although Reading already benefits from excellent rail links to London and many other areas of the country, the Government have again commenced work on further multi million pound improvements to the station and rail network.

With the above in mind, Reading is very high on the Pedlar trading list, which ultimately brings huge problems for the Council's Enforcement Officers and local Police.

Please find below answers to your questions, which are in the same order as set out in your consultation document.

01) Yes, the definition does require updating and whilst your possible new definition is a good starting point, the issue of 'a small means of transporting goods', does need *very clear guidelines*, as outlined at (3) below.

02) Yes, the inclusion of 'Touting' whether for services or business.

02) The majority of pedlars frequenting Reading have very large mobile stalls, some of which are up to 8 ft wide x 8ft long x 8ft in height. Being so large, many of the trolley's are heavy and difficult to move, even when empty. When loaded, many pedlars end up being prosecuted because they cannot physically keep their stall moving and thus become unlawful street traders. A clear restriction should be, that they can only sell what they can carry either over their arms or on any device around their neck. To allow a '*Small means of transporting goods*' e.g. a trolley, is to vague a concept and will be open to interpretation and abuse by all concerned.

04) None at this time.

05) Yes. As stated above, Reading is a very popular pedlar location and in the last year alone we have had pedlars from 28 different countries of the world but very few from England, with certificates issued from 18 different police forces throughout the UK. Every certificate we see is different, most contain some basics of name, age or date of birth but then comes a variety of other information, some like 'description and address' are useful but others with 'marks, scars and tattoos, are less so. Most pedlars we see speak and understand very little English.

06) No. As stated at (5) above the majority of pedlars visiting Reading are foreign nationals working for London 'Gang leaders'. As a consequence;

- a) Passport details and entry conditions are essential. Within the past 12 months we have had foreign nationals working as pedlars and are in the country on a visitors visa only.
- b) Proof of residency. Some have been granted their pedlars certificate on the second day of their being in the country and without any proof of residency. At least 12 months proof of residency in the UK should be provided before any pedlars certificate is issued.

07) Yes, any system would be better than we have at present.

08) No, the additional information which should be held on a data base is as stated above and that is (where applicable) their passport details landing and entry conditions. In addition every foreign and non British EEC national should provide a certificate as to their good character and previous convictions (if any).

09) Yes, especially those who offer massages, beauty treatments makeovers as well as photographic portfolios and modelling opportunities, where the individual has to travel considerable distances and receives very little in return. In Reading, a number of complaints have been received from dissatisfied customers over recent years but before any action can be taken the organisers have closed down and moved on.

10) Yes if the above issues are also included.

11) Yes

12) Yes most definitely. Many certificates, although issued by the police are dealt with by civilians in an office who have little or no concept of what a pedlar is, does, or the problems which can be caused. Our local police do not carry out any form of criminal check on EEC or foreign nationals and they automatically cross out the section relating to the pedlar being of good character as they have no way of ascertaining such information.

13) Yes, provided all foreign and EEC nationals are required to produce their passports and where appropriate their I.D. cards, the details of which are recorded.

14) By revoking the Pedlars Acts and amending the Local Government (Misc prov) Act 1982, to incorporate pedlars, does have the potential to resolve the pedlar problem in Reading. As all, save two streets in Reading are consent streets, this would allow approval and/or restriction as and when necessary.

15) Whilst I believe this option could work in Reading, I am unsure it would have the same desired effect in all towns throughout the country, purely due to local needs and requirements and probably ancient charters etc.

16) Yes, there could be a central Government or an existing agency to keep a register of all pedlars, as well as registers of all personal licence holders under the Licensing Act 2003. However, Local Authorities and Police would require access to it.

17) Whilst such a concept is worthy of consideration, there is insufficient information at present to make a measured response to it. From the information available, it is suspected there would be a mixed reaction by Local Authorities. It would also depend on the political will of an authority at any given time. Some would clearly embrace the issue and others who are not currently affected in any way by pedlars, would likely ignore the situation until if and when it became a problem. This situation in itself would likely cause confusion as to who has/has not adopted the proposals.

18) The favoured option would be 'D' provided the Magistrates' are fully trained in relation to the forfeiture aspect.

19)(i) Yes, most are more than capable of doing so although any regulations need to allow officers to do so without the need to wear a uniform. Any penalty however, does need to be substantial between £200 -£300.00. Anything will only result in proceedings being taken to the courts again.

19)(ii) Yes, at present Local Authority Enforcement Officers frequently have to wait for police officers to be available, if goods are to be seized. This would free up the police for other tasks.

20) Although there would still be a need for L.A. Enforcement Officers to carry out observations in order to prove an offence had taken place, following the issue of a FPN and any subsequent seizure of the goods, the case is basically over apart from any forfeiture proceedings. This would greatly reduce the overall time spent on taking/making statements, preparing a file for court and any subsequent court appearance, thus the overall costs to the L.A. would be reduced and officers can be freed up to deal with other issues.

21) It appears to be sufficient, apart from any touting offences if they are to be included.

22) Any FPN should be substantial as stated at 19(i) above, otherwise;

(i) There would be no incentive for the Enforcement Officers to issue a FPN.
(ii) There would be no incentive for the pedlar to comply with the law and any conditions attached as they would see a FPN as an occupational hazard.

(iii) The system would not have the necessary support and be a waste of time and money and we would be no better off than we are today.

23) In some aspects, your perception may be generally accurate in as much as genuine pedlars who come into the town and sells their goods whilst on the move, are not a problem. The main issue we face, is that virtually every day of the year people with pedlars certificates are transported from London to Reading by 'gang leader' type bosses and dropped off around 09.00 hours with their trolleys and goods. It is fair to say that many are from Israel and china and have been recruited to come to the UK for up to 3 months at a time on a visitors visa and then sell goods. The trolleys are large and difficult to be pulled/pushed around. They are left in the town until around 20.00 hours each evening, irrespective of the weather, when they are picked up and transported back to London. As they come to the town every day, they are not pedling in the true spirit of the Act, they are street trading without a licence or consent. These are the people who are the main cause of the problems in Reading and I suspect that to be the same in other Towns and Cities.

24) This appears to be the case based on the information provided.

25) Yes most definitely, as in Reading on some occasions we can have as many as 15 pedlars in the Town Centre all selling the same product.

26) Yes. Do not disagree with the list provided and cannot think of any additional occasions required.

27) At the time of the Reading Festival, we already issue an average of 25 additional street trading consents for a 3-4 day period on land around the perimeter of the festival, that way we can ensure that all the safe spaces are taken up by legitimate traders. However, we always have an unknown quantity of pedlars arrive with their large trolleys. As a consequence of the

large crowd numbers, the pedlars and ticket touts cause considerable obstruction and disruption by their presence. By being able to regulate the number of pedlars in advance would make life much easier during the event.

28) This is not an issue Reading is able to comment on.

29) Not aware of any evidence to the contrary.

30) Yes, it is a simple check list which can easily be understood by persons who speak and read English. Other nationals may have difficulty. The only issue which still requires some clarification is the issue of the trolley size, which you have said should be 'reasonably sized'. What is reasonably sized? What is reasonable to one person may not be to another person, so this should be specified as at answer (2) above and not left to the individual to decide.

31) Having read the details, it appears to cover all necessary aspects but still falls short in relation to trolley size. This issue cannot be left to individual pedlars to decide.

32) Not at present.

33) I note in your document you refer to a pedlar's certificate costing £12.25. However, a number of police forces already charge £12.50. If pedlar's certificates are to continue in any format, the cost should be substantially increased. Whilst the fee for the work involved in actually recording the pedlar's details and other relevant information should be raised to between £60.00 and £100.00, the actual Enforcement costs frequently amount to several thousand pounds. The big problem we have at present, is that pedlars obtain their certificates in the area in which they have been residing, then trade in another and this is something which is unlikely to change. The issue this raises is that is a relatively simple process to record the necessary details and issue a certificate but it is then in the majority of cases, the local authority and/or police in another part of the country who are faced with the huge costs of dealing with the pedlar problems.

The majority of pedlars only wish to trade in the larger Towns and Cities and at special events, where they consider they are likely to make the most profit. Whilst this is of course understandable, it does mean that many communities do not have and do not perceive there to be a problem. As a consequence of the above, the cost of a pedlar's certificate should also incorporate some enforcement costs especially as most street trading consents do cost several thousand pounds a year and therefore the pedlar is trading on the cheap.

Regards, John Mortlock
Reading Borough Council Licensing.

ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD

I am the Lead Member for Public Protection for the Royal Borough of Windsor & Maidenhead ("RBWM") and I am instructed by RBWM's Cabinet to write to you setting out this local authority's formal response to the above Consultation Paper. For your information, this follows a Cabinet meeting held on 28th January 2010.

The Consultation Paper sets out 33 questions for respondents to answer and RBWM's response is contained in the attached document which gives this local authority's answers to those questions.

RBWM hopes that its views will be taken into account in the consideration of this consultation. In the meantime, please do not hesitate to contact me if you have any queries or require further information.

Councillor Phil Bicknell
Lead Member for Public Protection
Royal Borough of Windsor and Maidenhead

DEPARTMENT FOR BUSINESS INNOVATION & SKILLS

CONSULTATION ON MODERNISING STREET TRADING AND PEDLAR LEGISLATION

RESPONSE OF THE ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD

QUESTION 1

Do you agree that the definition [of pedlars] is in need of updating and clarifying? If not, please provide your reasons.

Yes. The definition of a pedlar is out-of-date and does need updating to clarify what activities are permitted.

QUESTION 2

Do you think anything should be taken out or added to the list [of proposed elements to be included in a new definition of a pedlar] and why?

The list accurately reflects the case law in this area and we are happy that the proposed elements are sufficient.

QUESTION 3

Do you think the permitted size of a trolley should be set out in the definition? Please provide reasons for your answer and an indication of any size you think appropriate.

Case law has agreed that a pedlar can have some means of transporting stock whilst on the move and we think that is reasonable. The current and proposed new definition of a pedlar both refer to the constant movement inherent in a pedlar's activities. For that reason, a trolley must be small enough to be moved with ease and our view is that the dimensions of an average supermarket shopping trolley would be appropriate.

QUESTION 4

Do you have alternative suggestions? Please provide them.

N/a.

QUESTIONS 5 and 6

In your view, will updating the certificate [as described in the consultation document] make verification and identification of lawful pedlars easier for enforcement officers? Please give reasons for your answer.

In your view, is the list of information to be included in a modified certificate complete? If not, please state what information you believe should be added/removed and why.

Pedlar's certificates currently lack standardisation and are easily copied or forged. We agree with the measures set out in the consultation in this regard but would recommend that the date of issue of the certificate be included as well as the date of expiry.

QUESTION 7

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

Yes. A national database is vital to allow for efficient verification of certificates

QUESTION 8

Do you agree that the [proposed] list of information to be held on the database is complete and correct? If not, please state what information you would remove/add and why.

We are happy with the proposed list.

QUESTION 9

With reference to section 6 of this document would you support the reintroduction of certification for pedlar service providers? If so, please say why and provide any evidence in support of your view. If not, please say why.

The Services Directive makes it very difficult to institute a national authorisation system for service-only pedlars. Given that there appear to be very few such pedlars operating in England and Wales we do not feel that the reintroduction of certification for pedlar service providers is a realistic or necessary option.

QUESTION 10

Do you think the proposed criteria [for suitability to hold a pedlar's certificate] will offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a certificate?

Yes. The proposed criteria mirror those which currently apply to street trading licences and, as long as there is a right of appeal against a refusal, we feel that the proposal is a fair one.

QUESTION 11

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

Undoubtedly. The current 'good character' based criteria allows too much subjectivity and inconsistency.

QUESTION 12

In your view, should responsibility for issuing pedlars' certificates be transferred from the police to local authorities? Please give reasons for your answer.

Yes. Local authorities already licence street traders and it would be common sense for pedlars to be licensed by them too. The additional burden on authorities would be minimal and the policing bureaucracy taskforce itself has recommended this course of action.

QUESTION 13

Do you think that clear terms for refusal of applications in the legislation, coupled with a right of appeal, are sufficient safeguards to ensure a fair and non-discriminatory certification regime? If not, what alternative or additional safeguards do you think are required?

Yes. The system would mirror existing provisions – both for street trading licences and, for example, personal licences under the Licensing Act 2003.

QUESTIONS 14 and 15

What are your views on the above option [i.e. to revoke the Pedlars Act and to incorporate all provisions relating to pedlars into the Local Government (Miscellaneous Provisions) Act 1982, as per street trading] and how this might affect street trading or pedlar activity?

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

It would make absolute sense to revoke the outdated Pedlars Act (whilst retaining the right for individuals to trade as pedlars) and to bring the regulatory provisions under the current legislation that governs street trading. This approach, coupled with the transfer of the certification responsibility to local authorities, would ensure a consistent approach to all street trading activity.

QUESTION 16

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

We feel that the proposal to transfer responsibility to local authorities is the practical and necessary route.

QUESTION 17

What are your views on the above option [i.e. to revoke the Pedlars Act and exclude pedlar activity from street trading regulation]? Please give reasons for your answer.

22

We see no good reason to simply revoke the Pedlars Act without transferring regulation to other legislation. We do not want to see an end to pedlar activity – simply to have it more efficiently regulated – and we do not support this option.

QUESTION 18

Which of the above options [i.e. enforcement options] do you favour?

Option D – provide local authority enforcement officers with powers to issue FPN's and powers of seizure, with forfeiture by order of the Courts.

QUESTION 19

Should Local Authority Enforcement Officers be given powers to:

- i) issue fixed penalty notices
- ii) seize goods, with forfeiture by order of the Court?

Please give reasons for your answer.

Yes. The offences are relatively low level ones and prosecution is a disproportionate and costly method of dealing with the offences. FPNs are more appropriate and less costly. Powers of seizure would mirror powers given to local authority enforcement officers by other legislation.

QUESTION 20

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

Enforcement of existing pedlar legislation is extremely difficult, time-consuming and not cost-effective. Taking cases to the magistrates court would inevitably cost over £1,000; average fines nationally are around £200 and costs awarded are invariably lower than those incurred. The proposed new powers are more appropriate and more cost-effective.

QUESTION 21

Is the list of offences in respect of FPNs complete and correct? If not, please state which offences you would add or take away, and why.

We have no proposed additions to the list.

QUESTION 22

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

They should be in line with existing FPN levels under other legislation – £80 to £100.

QUESTION 23

Do you agree with the Department's general perception, as set out above [i.e. the general perception that pedlars provide desirable competition and do not on the whole trade more or less unfairly than other types of traders]? If not, please explain.

Yes this authority would broadly agree with that perception.

QUESTION 24

Do you agree that if provision for more enforcement options against illegal street trading and a sufficient demarcation between legitimate pedlary and other street trading was established (along the lines discussed elsewhere in this document) that this would address the issues of concern to some local authorities in relation to unfair trading and competition? If not, please explain.

Undoubtedly. The proposals would certainly allow for a more consistent approach to all forms of trading.

QUESTION 25

Do you agree that, in some circumstances, restrictions on the number of legitimate pedlars in specified areas and at specified times are justifiable? If not please explain why you do not agree.

It is desirable for the power to be in place – with attendant rights of appeal against a local authority implementing restrictions. In particular streets at particular times or during specific events a local authority may have a justifiable need to restrict numbers and therefore we would agree with this measure.

QUESTION 26

Do you agree that the list above [i.e. the list setting out examples of exceptional circumstances when restrictions on pedlar numbers may be justified] illustrates the circumstances under which restriction on numbers is justifiable? Do you disagree with any of the listed circumstances, if so why? Would you add any circumstances to the list, if so, which and why?

We think that the list is comprehensive and does not need anything added or removed.

QUESTION 27

Do you have any observations in relation to the ideas aired in the final paragraph above on methodology and notice [i.e. how would any restrictions be notified]?

The paragraph states that this issue "would require further work in the light of the outcomes of this consultation" and we would agree with that. Any restrictions would certainly need to be properly communicated but the detail of such a system will need to be discussed in more detail after this consultation.

QUESTION 28

Should street trading appeals in London be determined by the Magistrates' Court or the Secretary of State? Please give reasons for your answer.

N/a

QUESTION 29

If you are aware of any evidence to suggest that the conclusions set out above [i.e. that the Services Directive makes it difficult to institute a national system of authorisation for pedlars who provide services only] do not reflect the actual position either in respect of our perceptions of numbers of pedlars of services only or in respect of our understanding of the requirements of the services directive, please provide it. Note that a pedlar of goods and services will need to be certified in order to trade as a pedlar of goods.

We think your conclusions are correct.

QUESTIONS 30, 31 and 32

[n.b. these questions refer to a draft guidance document aimed at providing clarification to all parties on the regulatory street trading and pedlary regime in England & Wales]

Is the checklist at the front of the guidance an adequate one-page summary detailing what legal street selling looks like? Please give reasons for your answer including anything you would like to see added or removed.

Do you think the draft guidance meets the needs of the target audience, i.e. enforcers and traders, including pedlars? Please give reasons for your answer.

Do you have suggestions for amendments to the guidance? If so please specify how the guidance might be reformatted, added to or subtracted from, and why.

The draft guidance provides a useful summary of the current position with respect to pedlary and street trading and it highlights the fact that the current law is out-of-date and needs updating. The document will of course need to be amended should this consultation result in changes to the current regime but other than that we have no suggested amendments.

QUESTION 33

If you have any other comments or observations, in particular any information on possible costs relating to the options (see Impact Assessment), we are happy to receive them as well.

We have no additional comments.

ST. ALBANS COUNCIL

Dear Sirs

Please find attached the response from St Albans District Council.

Kind regards

Miss Judith Adamson
Regulatory Solicitor
Legal & Democratic Services
St Albans City & District Council

St Peter's Street, St Albans, AL1 3JE
judith.adamson@stalbans.gov.uk

Ext 2559

Direct line: 01727 819559

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Historic St Albans District: a premier community



Response from St Albans City & District Council to Consultation on Street Trading and Pedlar Laws

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

Yes. We consider that the law is outdated. It uses language that does not reflect 21st century Britain.

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

The current list contains too many references that are vague and open to a subjective interpretation. In particular, “keeping a reasonable distance from last sales position...” is not sufficiently clear and should be more precise. Similarly, the reference to avoiding standing still between sales needs to be clarified more precisely. The reference to the “trolley” also needs to be clarified.

Question 3: Do you think the permitted size of a trolley should be set out in the definition. Please provide reasons for your answer and an indication of any size you think appropriate.

As we have stated above we feel that the trolley should be defined to provide some certainty for applicants. It may be appropriate to have some details of the maximum size, or even the acceptable design of a trolley.

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

None

Question 5: In your view, will updating the certificate as described above make verification and identification of lawful pedlars easier for enforcement officers? Please give reasons for your answer.

Yes. It will greatly improve the ability of enforcement officers to verify that only the person issued with the pedlars certificate is actually using it, if the certificate has a photograph on in.

Question 6: In your view, is the list of information to be included in a modified certificate complete? If not, please state what information you believe should be added/removed and why.

Yes.

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

Yes, we agree that a national database could potentially improve the consistency of control of pedlars. However, the idea of a national database was canvassed for personal licence holders but the cost was considered to be prohibitive. Why would the position be any different for pedlars?

Any national database would need to be easily accessible to all Councils.

Question 8: Do you agree that the list of information to be held on the database is complete and correct? If not, please state what information you would remove/add and why.

We agree that within Option B the first item on the list, e.g. all the information displayed on the pedlars' certificate, including name, address issuing authority and certificate number, should be held on the database. However, we do not agree that details listed in items two and three on the list should be kept on the database. If the certificate was granted regardless of the offences then they are not relevant, and therefore do not need to be stored. If the certificate was refused then new information will be obtained should there be a new application for a certificate, and again this information is not relevant.

Question 9: Would you support the reintroduction of certification for pedlar service providers? If so, please say why and provide any evidence in support of your view. If not, please say why.

We do feel that pedlar services should be reintroduced. All pedlars should be covered by the regulatory scheme in the interests of fairness and public safety. Whilst we recognise that pedlary may not be regularly associated with crime, a system whereby the public can expect anyone trading on a “door to door” basis to be able to produce a pedlars’ certificate will be more effective in preventing crime.

Question 10: Do you think the proposed criteria will offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a certificate?

We consider the proposed wording to be vague – how are you defining “...other sufficient reason..”? If this term is used then guidance will be necessary to explain the definition. It would be better to base suitability on previous criminal history.

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

As above.

Question 12: In your view, should responsibility for issuing pedlars’ certificates be transferred from the police to local authorities? Please give reasons for your answer.

Yes. The Local Authorities are better placed to deal with enforcement of pedlars’ certificate as they have experience of assessing suitability in terms of taxi licensing, street trading etc. There are costs implications for the Local Authorities should they have to take on another regulatory scheme.

Question 13: Do you think that clear terms for refusal of applications in the legislation, coupled with a right of appeal, are sufficient safeguards to ensure a fair and non-discriminatory certification regime? If not, what alternative or additional safeguards do you think are required?

Yes.

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

We agree that a system would need to be in place to ensure that there was consistency across the country. Therefore the proposal in paragraph 81 to compel all Local Authorities to participate in a certification of pedlars scheme would seem sensible.

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

As above.

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

The best way to maintain a national database would seem to be under an amendment to the Pedlars' Act.

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

We consider that a consolidated system, national scheme will provide for better consistency.

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

Option D.

Question 19: Should Local Authority Enforcement Officers be given powers to:
issue fixed penalty notices
seize goods, with forfeiture by order of the Court?
Please give reasons for your answer

We consider that enforcement officers/local authorities should have the powers to issue FPNs and seize goods as stated. It is important that councils have a range of enforcement options so that we can react to the offence depending on the severity of that particular offence.

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

As above

Question 21: Is the list of offences in respect of FPNs complete and correct? If not, please state which offences you would add or take away, and why.

No – the offence of contravention of conditions of pedlars' certificate should be added.

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

We would suggest the higher level of fees, e.g. £300 – this needs to take into account the additional cost burden on local authorities in pursuing these offences as well as the deterrent effect of higher fines.

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

Yes.

Question 24: Do you agree that if provision for more enforcement options against illegal street trading and a sufficient demarcation between legitimate pedlary and other street trading was established (along the lines discussed elsewhere in this document) that this would address the issues of concern to some local authorities in relation to unfair trading and competition? If not, please explain.

Yes.

Question 25: Do you agree that, in some circumstances, restrictions on the number of legitimate pedlars in specified areas and at specified times are justifiable? If not please explain why you do not agree.

Yes.

Question 26: Do you agree that the list above illustrates the circumstances under which restriction on numbers is justifiable? Do you disagree with any of the listed circumstances, if so why? Would you add any circumstances to the list, if so, which and why?

Not entirely. We would wish to be able to restrict the ability of pedlars to trade in our market area on market days. We also agree with the LACORS proposal that restrictions may need to co-ordinate with street collections in some areas, especially at peak times.

Question 28: Should street trading appeals in London be determined by the Magistrates' Court or the Secretary of State? Please give reasons for your answer.

For consistency the magistrates court should determine appeals throughout England & Wales.

Draft Guidance

Question 30 – Is the checklist at the front of the guidance an adequate one page summary?

We feel that there are a number of areas that require clarification as set out in our response to Question 2.

Question 31 & 32

We feel that resources would be better placed in modernising the pedlary system. Any guidance needs to be very clear and easy to understand.

Lesley Cameron, Principal Licensing Officer

Judith Adamson, Regulatory Solicitor

ST. HELEN'S COUNCIL

Please find attached the consultation response from St Helens.

We firmly believe that the legislation needs to be revised bringing pedlarly into the 21st century.

Regards Diane Foreman

Consultation on modernising Street Trading and Pedlar Legislation, and on draft guidance on the current regime. St Helens Council

Question	Response and Comments
1.	Yes
2.	We were of the opinion that the terms used, “reasonable distance” and “small means of transporting” are too vague.
3.	We are of the opinion that trolleys shouldn’t be more than 1m x1m x 1m
4.	Any means used to transport goods should be capable of being carried by a person. (this could introduce the concept of maximum weight !)
5.	Yes – this will provide traceability of individuals and ensure bone fide applications.
6.	Date of Birth should be included
7.	Yes
8.	Yes – Date of Birth to be included
9.	Certification of pedlar services would be beneficial. Some authorities exercise “no cold calling” zones in vulnerable areas. Certification would enable authorities to provide pedlars with this type of information.
10.	More guidance would be needed in respect to the specific grounds of what is deemed “not suitable” – would this also impact on street trading applications ?
11.	Clarification needed on how an appeal against a refusal of an application is to be made. Will this be an appeal to the Courts?
12.	Yes

13.	Yes
14.	All authorities would need to participate in the certification of pedlars. It is suggested the 1 authority could manage the national data base on behalf of all others. Relevant charges could be made for the administration of the data base.
17	This is “implied” consent to trade as a pedlar – this would create many problems for authorities and there would be a lack of consistency nationally on where and when pedlars could trade.
18.	Option D
19.	Yes
20	New powers are required, particularly the seizure of goods of non certificated traders. Sanctions available under health and safety and food safety legislation are limited.
22.	A minimum of £60 - £200 which would act as a deterrent
23.	Pedlars should be able to trade fairly within the law
25.	Yes
27.	Prior notification to pedlars of individual authority restrictions would be useful. Pedlars could be provided with authority contacts at the time of certification.

SHEFFIELD COUNCIL

Hello,

Please find attached the response from Sheffield City Council. The response represents views from elected Members and officers of Sheffield City Council (including Trading Standards) and South Yorkshire Police. The consultation documents were circulated to all concerned asking for their views and a Policy meeting was held for Members to discuss the matter before collating the comments and finalising the response.

Thank you.

Regards.

<<Consultation - Pedlars (DH).Doc>>
Kathy Stockdale
Principal Licensing Officer,
Deputy Chief Executive's,
Sheffield City Council, Town Hall, Pinstone Street,
Sheffield, S1 2HH.

Legal Services

Director of Legal Services

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Our Ref: LIC/243/SJL

Date: 22nd January, 2010

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

Dear Sir,

Street Trading and Pedlar Laws - Consultation

Thank you for the opportunity to comment on the modernising street trading and pedlar legislation and on draft guidance.

I have set out below our comments/responses to the questions posed in your consultation document, I have included the questions for ease of reference.

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

Answer: We agree the definition of “Pedlar” needs updating.

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

Answer: We would like to see added to the list a restriction on remaining in, or continually moving along the same street in a repetitive manner. There should be a reasonable distance between sales positions and pedlars should not return to a previous sales position or its immediate vicinity within 24 hours. The ‘transporting of goods’ should be in a non-motorised vessel and they must cover or remove goods if taking a break.

Question 3: Do you think the permitted size of a trolley should be set out in the definition? Please provide reasons for your answer and an indication of any size you think appropriate.

Answer: Whilst it may seem over prescriptive to specify the size of any trolley without doing this some people will use trolleys that are excessive in size so we agree that a restriction on the size is necessary and would suggest no bigger than a two wheeled 80litre suitcase (including storage). This would be a reasonable size for someone to carry goods yet remain ‘a pedestrian’. We also believe that any area for display of goods should be prescribed by reference to a total area as this will then limit large display frames being attached to a storage trolley. This is a problem we already have.

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

Answer: No.

Question 5: In your view, will updating the certificate as described above make verification and identification of lawful pedlars easier for enforcement officers? Please give reasons for your answer.

Answer: Yes. The update in the certificate will make identification easier for enforcement officers. The simple fact that the proposed changes will include a photograph will prevent misuse by other people and the details provided will make it easier to trace people who fail to comply with enforcement action and ensure there is a record available of any previous enforcement action. There is an issue regarding permanence of address as some live in caravans. It should be a statutory responsibility to notify local authorities of a change of address /other details.

Question 6: In your view, is the list of information to be included in a modified certificate complete? If not, please state what information you believe should be added/removed and why.

Answer: The information should include the person's date of birth to allow easier checking for convictions. We do not see the need for a requirement for the National Insurance number to be included on the badge as this could be held on a national database.

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

Answer: Yes. A national database will have a beneficial effect on enforcement and certification. But is it the answer to the problem? No!!

Question 8: Do you agree that the list of information to be held on the database is complete and correct? If not, please state what information you would remove/add and why.

Answer: It should also include the date of birth, address and the National Insurance number (if not on the certificate). However any legislation needs to ensure that information on any database regarding offences and fixed penalty notices is up to date otherwise it will be counter productive. We have existing concerns regarding the Courts failure to notifying local authorities of convictions, etc. under the Licensing Act 2003. We also suggest that offences that are not under any new legislation but are related e.g. selling counterfeit goods, trades description offences etc are also recorded on the database. To ensure consistency of application across the country we suggest that the legislation prescribe such related offences.

Question 9: With reference to section 6 of this document would you support the reintroduction of certification for pedlar service providers? If so, please say why and provide any evidence in support of your view. If not, please say why.

Answer: Yes, we support the reintroduction of the certification and would like to see it included. The nature of the pedlar and itinerant trading means that a person would have to be calling at a series of house in the locality. This would ensure that people carrying out this activity are not criminals seeking opportunist thefts or burglaries. The public will be reassured by a modern identification and people who are merely purporting to be pedlars will be easily identified. We would also wish to see static service providers introduced into the Street Trading legislation as they can cause similar problems to static sellers and sometimes it can be a difficult to distinguish between sale of goods and provision of services.

Question 10: Do you think the proposed criteria will offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a certificate?

Answer: We feel the new proposed criteria does not offer enough clarity. It is open to different interpretations of 'misconduct' and also of 'other sufficient reasons'.

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

Answer: No, see 10 above.

Question 12: In your view, should responsibility for issuing pedlars' certificates be transferred from the police to local authorities? Please give reasons for your answer.

Answer: Yes, all licensing controls should be with the local authority. Applicants for pedlar certificates should have to apply in the area where they want to trade. Elected Members are there to control their district and what happens in it. Further it is our view that certificates should only be local and not national, similar to existing street trading legislation. We feel that if a pedlar is refused by one local authority they could apply to another local authority and be granted a certificate, allowing them to trade in the area where they had originally been refused. Some local authorities could be very generous in granting certificates in order to raise revenue. A further option would be for applicants to make their initial application and be 'registered' at the authority where they reside and then apply for additional consent/approval from individual authorities to trade in that authorities area. This further consent/approval would not involve any further 'fitness' test but would allow local restrictions on numbers to be easily controlled. Such application would also allow local conditions to be made aware to applicants.

Question 13: Do you think that clear terms for refusal of applications in the legislation, coupled with a right of appeal, are sufficient safeguards to ensure a fair and non-discriminatory certification regime? If not, what alternative or additional safeguards do you think are required?

Answer: Yes.

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

Answer: This is our preferred option, however see above regarding pedalling and street trading services. Any legislation should be generally applicable not adoptable.

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

Answer: Yes. See above.

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

Answer: See above re our views that licences should be local or there should at least be a local element to granting rights to peddle in an area, even if the licence granted applies nationally.

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

Answer: No. This would make the system worse than now and at be odds with street trading.

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

Answer: Option D.

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

- i) issue fixed penalty notices
- ii) seize goods, with forfeiture by order of the Court?

Please give reasons for your answer.

Answer:

- (i) Yes, this would allow for a speedy finalisation of the minor incidents and only more serious or repeated breaches would fall to the court.
- (ii) Yes without this offenders would continue to trade and commit offences as we feel that current fine levels and likely levels of fixed penalty notices will not be sufficient deterrent for illegal trading.

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

Answer: We currently take enforcement action under existing legislation but penalties / fines are too low to act as a deterrent and the offenders are back on the streets the next day. There needs to be a real deterrent such as potential loss of goods.

Question 21: Is the list of offences in respect of FPNs complete and correct? If not please state which offences you would add or take away, and why.

Answer: Add: Obstruction of an authorised officer and amend following to include:

- unauthorised street trading without a licence/**consent**.
- Contravention of condition of street trading licence/**consent** or temporary licence/**consent**.

- Failure to produce street trading licence/**consent** on demand.

Local authorities also issue street trading consents as well as licences and these need to be covered by the offence provisions. At the moment the only reference is to licences.

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

Answer: £300 seems appropriate.

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

Answer: No. Pedlars are a nuisance in most city centres and act illegally on vast majority of occasions taking advantage of the lack of clarity in the law. They engage in pestering and harassing visitors to our city centres. Also if there was no requirement to be licensed a claim of peddling could be used as a cover for unlawful activities, particularly door to door. A licence with photo identification would lead to identification and also expose those without a licence who made such a false claim. We also think that most people dealing with anybody door to door would wish to see some form of ID/approval.

Question 24: Do you agree that if provision for more enforcement options against illegal street trading and a sufficient demarcation between legitimate pedlary and other street trading was established (along the lines discussed elsewhere in the document) that this would address the issues of concern to some local authorities in relation to unfair trading and competition? If not, please explain.

Answer: Yes but our concerns are not so much related to unfair trading but illegal trading and excessive trading causing problems in areas of public access.

Question 25: Do you agree that, in some circumstances, restrictions on the number of legitimate pedlars in specified areas and at specified times are justifiable? If not please explain why you do not agree.

Answer: Yes – causes obstruction / visitors to the city are harassed.

Question 26: Do you agree that the list above illustrates the circumstances under which restriction on numbers is justifiable? Do you agree that the list above illustrates the circumstance under which restriction on numbers is justifiable? Do you disagree with any of the listed circumstances, if so why? Would you add any circumstances to the list, if so, which and why?

Answer: No. We have certain prime city locations where we do not prohibit street trading but restrict it. We would wish similar powers in respect of Pedlars. Therefore, it should be a local decision taken by locally elected members.

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

Answer: Each Council should have a policy available on their website / reception desks / licensing Offices. Should also have a clear application process with clear terms and conditions and provide information of restricted areas. This assumes that our proposals of a local area licence / area consent would go to individual authorities.

Question 28: Should street trading appeals in London be determined by the Magistrates' Court or the Secretary of State? Please give reasons for your answer.

Answer: Yes. London does not affect us and should be their own decision.

Question 29: If you are aware of any evidence to suggest that the conclusions set out above do not reflect the actual position either in respect of our perceptions of numbers of pedlars of services only or in respect of our understanding of the requirements of the services directive, please provide it. Note that a pedlar of goods and services will need to be certified in order to trade as a pedlar of goods.

Answer: We have no further evidence, however, we feel that such a scheme could be imposed and allowed under Service Directive. As long as it is necessary for such issues as public security, public policy, combating fraud and consumer protection. See our earlier responses particularly about how this type of activity could be used as a cover for unlawful activities particularly 'door to door'.

Question 30: Is the checklist at the front of the guidance an adequate one-page summary detailing what legal street selling looks like? Please give reasons for your answer including anything you would like to see added or removed.

Answer: There should be a fresh consultation on Guidance once it has been decided what the legislation is going to be. To give views now would be very lengthy and could change depending on the outcome of the final legislation.

Question 31: Do you think the draft guidance meets the needs of the target audience, i.e. enforcers and traders, including pedlars? Please give reasons for your answer.

Answer: As 30.

Question 32: Do you have suggestions for amendments to the guidance? If so please specify how the guidance might be reformatted, added to or subtracted from and why.

Answer: As 30.

Question 33: If you have any other comments or observations, in particular any information on possible costs relating to the options (see Impact Assessment), we are happy to receive them as well.

Answer: Our opinion is that the Pedlar legislation should be fully repealed and all types of trading should come under Street Trading and the Local Government (Miscellaneous Provisions) Act 1982.

Yours faithfully

Frances Woodhead
Director of Legal Services

SOUTH YORKSHIRE TRADING STANDARDS / BARNSLEY METROPOLITAN BOROUGH

South Yorkshire Trading Standards Committee

Response to the BIS STREET TRADING AND PEDLAR LAWS: A consultation on modernising street trading and pedlar legislation.

Introduction

The South Yorkshire Trading Standards Committee is a statutory body set up under local government legislation to coordinate Trading Standards activity across South Yorkshire. It comprises elected Members and Officers from the four constituent authorities of Barnsley, Doncaster, Rotherham and Sheffield.

The Committee has an interest in the issues of street trading and pedlary, both from a trading standards point of view and from a general local authority frustration with the problems experienced in our streets and town centres.

The Committee has expressed concern about the apparent lack of coordination across the country on this issue, with a number of local authorities resorting to introducing legislation through Parliament to tackle the problem in their area. The Committee welcomes the opportunity to comment on this consultation and trusts that there will be a coordinated approach to street trading and pedlary across the country thereafter.

The Committee would support the LACORS suggestion that a working group of experts be set up to consider an appropriate national framework.

Summary of Key Questions and SYTS Committee Responses

Certification Process

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

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

Yes, the law clearly needs updating. The current legislation is very out of date and needs bringing from the nineteenth century into the twenty-first. Trading methods and techniques have changed and the regime for controlling trade in our streets needs to reflect this.

Question 3: Do you think the permitted size of a trolley should be set out in the definition. Please provide reasons for your answer and an indication of any size you think appropriate.

All the authorities in the South Yorkshire area have expressed concern that traders are using trolleys to sell their wares that do not lend themselves to moving about freely, in apparent conflict with the spirit, if not the "law", on peddling. There seems to be some merit, if peddling is allowed at all, in stipulating a maximum size of trolley.

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

No.

Question 5: In your view, will updating the certificate as described above make verification and identification of lawful pedlars easier for enforcement officers? Please give reasons for your answer.

Yes. In the opinion of the Committee, the proposals to update the certificate would make verification and identification of lawful pedlars easier. We support the proposal to introduce a standard format, including photo identification. This would facilitate consistent enforcement and communication across the country.

South Yorkshire Trading Standards Committee

Response to the BIS STREET TRADING AND PEDLAR LAWS: A consultation on modernising street trading and pedlar legislation.

Question 6: In your view, is the list of information to be included in a modified certificate complete? If not, please state what information you believe should be added/removed and why.

We suggest that date of birth (and possibly place of birth) is also included.

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

A national database would be valuable, on the condition that it is well managed and up to date. It would also need to have the appropriate access and security features, allowing officers from local authorities and the Police access when they need it, while maintaining integrity and security. If it cannot be easily checked by enforcement officers it will be of very limited value. Thought would also have to be given to set up and maintenance costs.

Question 8: Do you agree that the list of information to be held on the database is complete and correct? If not, please state what information you would remove/add and why.

The Committee supports the LACORS view that a working group needs to consider this alongside other issues.

Question 9: Would you support the reintroduction of certification for pedlar service providers? If so, please say why and provide any evidence in support of your view. If not, please say why.

In principle, yes. It is the opinion of Trading Standards Officers, and Town Centre Management colleagues, that the provision of services by pedlars and other street traders cause just as much concern and detriment to consumers and legitimate businesses as selling goods. Many doorstep crime issues are the result of selling services door-to-door and we would welcome robust controls in this area.

Question 10: Do you think the proposed criteria will offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a certificate?

Using "good character" criteria, or establishing that a person is "fit and proper" are sensible in principle, but depend on robust and sensible guidance as to what these terms mean. Clearly a criminal history will be relevant, but this in itself depends on the licensing / issuing authority having timely access to accurate and up to date information. The peripatetic nature of street traders and pedlars make good access to criminal and other information on an applicant crucial in the assessment of whether a person is fit and proper to hold a certificate or licence.

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

Question 12: In your view, should responsibility for issuing pedlars' certificates be transferred from the police to local authorities? Please give reasons for your answer.

In principle an updating and consolidation of both pedlars' legislation and street trading legislation into a single consolidated system is worthy of consideration as it is logical that they are dealt with together. Therefore the transfer of the issuing of pedlars' certificates from the police to councils

South Yorkshire Trading Standards Committee

Response to the BIS STREET TRADING AND PEDLAR LAWS: A consultation on modernising street trading and pedlar legislation.

because of the links with street trading also seems sensible. However there will clearly be costs to implementing this and councils would need to be able to ensure that they can recover all the costs of administering and enforcing any new regime (not simply the pure administrative cost of issuing the certificate as is currently the case).

Question 13: Do you think that clear terms for refusal of applications in the legislation, coupled with a right of appeal, are sufficient safeguards to ensure a fair and non-discriminatory certification regime? If not, what alternative or additional safeguards do you think are required?

Yes, this would be consistent with other licensing / registration approaches.

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

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

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

In principle, revoking the Pedlars Acts and amending the Local Government (Miscellaneous Provisions) Act to bring pedlars within street trading provisions will simplify the process but needs to be worked through with appropriate authorities and local government representatives.

Schedule 4 would need to include powers to seize goods and powers of arrest for enforcers.

Including pedlars in street trading legislation would have the advantage of providing a consistent approach, should licensing be transferred from the police to councils. In principle, the Committee believes this option is viable but needs more thought and discussion, possibly through the aforementioned national working party

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

Pedlars clearly cause great concern for local authorities, but revoking the Pedlars Acts and excluding pedlar activity from street trading regulation may cause more problems than it solves. Having a robust, consistent and suitably funded regime of control would enable local authorities to manage their streets and public spaces effectively. Key to the whole thing however, would be the need to build in local flexibility to allow authorities to implement local restrictions, where appropriate, to meet local needs.

Enforcement

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

The Committee favours option D (officers having the authority to issue fixed penalty notices and seize goods, with forfeiture available via the courts) as this gives local authority regulators the broadest range of tools to deal with enforcement issues.

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

- issue fixed penalty notices
- seize goods, with forfeiture by order of the Court?

South Yorkshire Trading Standards Committee

Response to the BIS STREET TRADING AND PEDLAR LAWS: A consultation on modernising street trading and pedlar legislation.

Please give reasons for your answer. AND

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

The Committee believes councils should have the powers to issue FPNs and seize goods as outlined above. It is important with any regulatory activity that councils have a broad range of enforcement options to ensure they can choose the most proportionate and appropriate response in each case.

Question 21: Is the list of offences in respect of FPNs complete and correct? If not, please state which offences you would add or take away, and why.

The list looks reasonable. If a suitable trolley for transporting goods were stipulated, then there would need to be an offence for this. This area could be looked at by the suggested working group.

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

The economic impact on a trader who does not comply with the law needs to be sufficient to act as deterrent. It also needs to be high enough to justify pursuit of non-payment by local authorities. The current system for littering seems to work well, with any FPN money going back to the local authority for administration and enforcement of street trading and peddling.

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

In the Committee's view, the Department's approach to this issue seems reasonable.

Question 24: Do you agree that if provision for more enforcement options against illegal street trading and a sufficient demarcation between legitimate pedlary and other street trading was established (along the lines discussed elsewhere in this document) that this would address the issues of concern to some local authorities in relation to unfair trading and competition? If not, please explain.

Yes, generally. However, we feel that consideration needs to be given to how this framework links with areas where councils and residents have agreed to set up No Cold Calling Zones or Cold Calling Control Zones.

Question 25: Do you agree that, in some circumstances, restrictions on the number of legitimate pedlars in specified areas and at specified times are justifiable? If not please explain why you do not agree.

The Committee agrees that such restrictions should be available – as per the comment under paragraph 17 above. This would enable councils to make local choices based on local need.

This could be utilised to ensure that pedlars do not adversely impact other businesses or visitors to the town centre. This could be in the form of numbers, time and location as examples. Such restrictions work well with street collections already dealt with by councils.

South Yorkshire Trading Standards Committee

Response to the BIS STREET TRADING AND PEDLAR LAWS: A consultation on modernising street trading and pedlar legislation.

Question 26: Do you agree that the list above illustrates the circumstances under which restriction on numbers is justifiable? Do you disagree with any of the listed circumstances, if so why? Would you add any circumstances to the list, if so, which and why?

This list seems reasonable.

Question 28: Should street trading appeals in London be determined by the Magistrates' Court or the Secretary of State? Please give reasons for your answer.

The Committee has no comment – this is not relevant to its area.

Draft Guidance

We support the LACORS view that this would be better discussed and agreed by a working group, and that a simple "How To" guide should be produced by the government for use by street traders and pedlars.

February 2010

SOUTHEND COUNCIL TRADING STANDARDS

Attached is the response on the above named consultation by Southend on Sea Borough Council.

Dave Slipper
Assistant Team Leader (Trading Standards)
Southend on Sea Borough Council

Street Trading and Pedlar Laws

Consultation Response by
Southend on Sea Borough Council

Street trading in Southend on Sea is regulated by Part V of the Essex Act 1987. Under this Act certain streets, primarily the sea front and main roads leading to the sea front trading is not permitted without the consent of the Borough Council. The interpretation of the Act is that Pedlars may not trade in these areas without specific consent. Touting for businesses is also prohibited. Nearly all pedlar activity in the Borough occurs within the prohibited area.

This part of the Essex Act was a re-enactment of an earlier Southend Corporation Act. The Council did not resolve that Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 should have effect in the Borough.

The comments in relation to the specific questions in the consultation are:

- 1 We agree that the definitions of pedlar are in need of updating and clarifying.
- 2 We do not think anything needs to be removed from the standard conditions.
- 3 We think the size of trolley should be set out so that only very small ones are permitted. An appropriate size should be equivalent to a normal supermarket shopping trolley.
- 4 We do not have any alternative suggestions.
- 5 We feel unable to comment, as pedlars are not permitted to trade within the prescribed area of the Borough.
- 6-11 See comments to 5 above
- 12 We believe that the issuing of pedlar's certificates should be transferred to the local authority local authorities have more interest in street trading and could advise applicants on local matters.
- 13 We feel that clear terms for refusal of applications, coupled with a right of appeal, would ensure a non-discriminatory certification regime.

- 14 The revocation of the Pedlars Act together with non-optional implementation of a revised Act on street trading would be of benefit as all street traders would be aware of local requirements.
- 15 We think that with further work this option is as viable as described in 14.
- 16 The national access to pedlar certificates could be maintained as described in 14.
- 17 The revocation of the Pedlars Act and the implementation of national street trading legislation would avoid confusion by pedlars on what is permitted in each area.
- 18 Option D would be preferred.
- 19 Local Authority Enforcement officers should be given power to I) issue fixed penalty notices and ii) seize goods with forfeiture by order of the Court. In the case of our Borough, enforcement of street trading provisions is carried out by Trading Standards Officers and Enforcement Officers who are already used to enforcing other legislation with similar powers.
- 20 The introduction of such new powers for local authority enforcement officers would enhance enforcement of this area together with other areas enforced such as Consumer Safety end the Consumer Protection from Unfair Trading Regulations (CPRS). It is arguable that unauthorised street trading can also amount to an offence under the CPRS as a prohibited practice of indicating a right to supply goods when the right does not exist.
- 21 The list of offences in respect of FPNs appears correct and complete.
- 22 The amount of money earned from illegal street trading can be quite large so the FPN should be set at a high enough level to deter contravention.
- 23 We agree with the Department's general perception.
- 24 The peak times for pedlar activity in the Borough are at special events such as the carnival, Christmas lights events and the Air Show, the Council authorises a number of street traders on these occasions and the influx of pedlars has an adverse effect on these authorised traders.
- 25 We agree that restrictions on pedlars in specified areas at specific times are justifiable.
- 26 We agree that the list illustrates the circumstances under which restrictions are justifiable.
- 27 We have no observation to make.

- 28 All appeals should be heard by the Magistrates' Court, in common with other licence and registration refusals. The Courts are used to dealing with such appeals, as is the local authority.
- 29 We are not aware of vast numbers of pedlars of services.
- 30 The checklist is an adequate summary. We do not feel anything needs to be added or removed.
- 31 The guidance would need to be reviewed completely if the changes suggested earlier were implemented. The guidance is not suitable for use in Southend where Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 has not been adopted.
- 32 See comments in 31.
- 33 We have no further comments or observations.

STOCKTON-ON-TEES COUNCIL

Please find attached comments in response to the above consultation document.

Regards

Mick Vaines

Annex A - Summary of Questions

Certification Process

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

A. Yes

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

- A. 1. Could they use a bicycle/tricycle?**
- 2. Define 'reasonable distance'**
- 3. 'Avoid standing still' – what will be required to comply e.g. jumping up and down on the spot?**

Question 3: Do you think the permitted size of a trolley should be set out in the definition. Please provide reasons for your answer and an indication of any size you think appropriate.

A. Yes i.e. when does a trolley become a stall and require a street trading consent.

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

A. No

Question 5: In your view, will updating the certificate as described above make verification and identification of lawful pedlars easier for enforcement officers? Please give reasons for your answer.

A Yes as all of the information will be to hand and easily checked

Question 6: In your view, is the list of information to be included in a modified certificate complete? If not, please state what information you believe should be added/removed and why.

**A. Should it not include some form of anti-forgery device e.g. security hologram?
Would it/should it be trade specific?**

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

A. Yes

Question 8: Do you agree that the list of information to be held on the database is complete and correct? If not, please state what information you would remove/add and why.

A. Yes

Question 9: Would you support the reintroduction of certification for pedlar service providers? If so, please say why and provide any evidence in support of your view. If not, please say why.

A. No view

Question 10: Do you think the proposed criteria will offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a certificate?

A. Yes

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

A. Yes

Question 12: In your view, should responsibility for issuing pedlars' certificates be transferred from the police to local authorities? Please give reasons for your answer.

A. Yes – subject to the correct level of fee. Local knowledge

Question 13: Do you think that clear terms for refusal of applications in the legislation, coupled with a right of appeal, are sufficient safeguards to ensure a fair and non-discriminatory certification regime? If not, what alternative or additional safeguards do you think are required?

A. Yes, possibly together with the power to restrict numbers of pedlars trading at a particular location or time of year/event.

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

A. It makes sense to have all the provisions together in one piece of legislation but the amendments would require careful drafting and would need to be prescriptive in the case of pedlars for the scheme to work. On this basis it is

difficult to see how it could be incorporated into the street trading provisions in schedule 4 of the LG(MP)A which is adoptive. It is considered that such a scheme would not affect pedlar activity as it is presumed that certificates would be obtained by applicants from the local authority where they are resident. This in turn would provide the local authority with greater knowledge and possible controls over pedlar/street trading activities in their area.

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

A. Yes – see above comments

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

A. Only through new or amended legislation.

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

A. This would be a better option for local authorities as local needs would determine whether to adopt the provisions, as is the situation now, and whether to exert controls over numbers of traders.

Enforcement

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

A. Option D

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

- i) issue fixed penalty notices
- ii) seize goods, with forfeiture by order of the Court?

Please give reasons for your answer.

A. Yes. It would allow you to deal with a problem immediately.

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

A. In dealing with illegal ice cream vendors during a major festival in this area the only option available was to threaten them with prosecution and a failure to cooperate with enforcement officers would have required tracing people through vehicle registration details and then having to prove who actually committed the offence.

Question 21: Is the list of offences in respect of FPNs complete and correct? If not, please state which offences you would add or take away, and why.

A. Yes

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

A. As suggested, to be an effective deterrent

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

A. Yes

Question 24: Do you agree that if provision for more enforcement options against illegal street trading and a sufficient demarcation between legitimate pedlary and other street trading was established (along the lines discussed elsewhere in this document) that this would address the issues of concern to some local authorities in relation to unfair trading and competition? If not, please explain.

A. Yes

Question 25: Do you agree that, in some circumstances, restrictions on the number of legitimate pedlars in specified areas and at specified times are justifiable? If not please explain why you do not agree.

A. Yes

Question 26: Do you agree that the list above illustrates the circumstances under which restriction on numbers is justifiable? Do you disagree with any of the listed circumstances, if so why? Would you add any circumstances to the list, if so, which and why?

A. Yes but including controls on numbers in consent streets where the number of consents is already restricted but not prohibited. We operate such a restriction in our town centre.

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

A. You could make it a condition in a pedlar's certificate to contact in advance a local authority in whose area they intend to trade e.g. 28 days advance notice would allow the LA to determine whether additional licences would be required. However the time period needs to be of sufficient duration should matters need to be referred to a Licensing Committee hearing. This would also be determined by the council's scheme of delegation in these matters and any right of appeal or right to be heard that an applicant may have.

Question 28: Should street trading appeals in London be determined by the Magistrates' Court or the Secretary of State? Please give reasons for your answer.

A. No comment

Service Directive

Question 29: If you are aware of any evidence to suggest that the conclusions set out above do not reflect the actual position either in respect of our perceptions of numbers of pedlars of services only or in respect of our understanding of the requirements of the services directive, please provide it. Note that a pedlar of goods and services will need to be certified in order to trade as a pedlar of goods.

A. No comment

Draft Guidance

Question 30: Is the checklist at the front of the guidance an adequate one-page summary detailing what legal street selling looks like? Please give reasons for your answer including anything you would like to see added or removed.

A. If it is intended to be guidance in respect of street trading and pedlary then the checklist should include street trading. Information/wording is not consistent e.g. lawful says you must keep a ‘reasonable distance’ from your last sale position, unlawful suggests you need to move from ‘street to street’.

Question 31: Do you think the draft guidance meets the needs of the target audience, i.e. enforcers and traders, including pedlars? Please give reasons for your answer.

A. Yes as there isn't any at present.

Question 32: Do you have suggestions for amendments to the guidance? If so, please specify how the guidance might be reformatted, added to or subtracted from, and why.

A. No comments

Question 33: If you have any other comments or observations, in particular any information on possible costs relating to the options (see Impact Assessment), we are happy to receive them as well.

A. Fee levels would need to be set at a more realistic level to cover the cost of issuing a certificate, maintaining register details and enforcement.

STOKE-ON-TRENT COUNCIL

Regarding issues on Pedlars.

They carry no public liability insurance

There is no control of the quality of goods

They can travel in from anywhere although pedlar law states that they should travel to trade on foot.

It takes up a tremendous amount of officer time ensuring that they keep moving to comply with pedlar law.

There are no limitations on the number of pedlars who can come in to a trading area.

There is no definition on the size of trolley

Traders who pay for pitches get very upset that pedlars do not have to pay.

Hope that this helps.

Regards,

Alan Drysdale | Operations and Events Officer
City Centre Management | Economic Development
City of Stoke-on-Trent
2nd Floor Goodson Building Goodson Street
City Centre Stoke-on-Trent ST1 2AT

SWANAGE TOWN COUNCIL

Dear Sirs,

As a seaside resort town Swanage is a key destination for many pedlars and street traders. Therefore, the Town Council warmly welcomes the key proposals set out in your consultation document of 6th November 2009.

The Town Council discussed the consultation document at its meeting held on 18th January 2010 and fully endorses the following proposed changes:

- introduction of an updated definition of a pedlar;
- introduction of a new pedlars' certificate;
- the transfer of enforcement powers to local authorities;
- the empowerment of local enforcement officers to issue fixed penalty notices.

During the debate attention was drawn to the need for uniformity in the regulations, both between street traders and pedlars, and between those operating on the public highway, and on private land such as forecourts.

Yours faithfully

Martin Ayres
Deputy Town Clerk
Swanage Town Council

SWANSEA COUNCIL

Please find attached consultation document in respect of the above.

Martin Saville
Head of Environmental Health Services
City and County of Swansea
Civic Centre
Swansea
SA1 3SN

Street Trading and Pedlars Laws

A Joint Consultation on Modernising Street Trading and Pedlars Legislation, and on draft guidance on the current regime

Annex A – Certification Process

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

Agree as the 1871 (Amended) Act is so out of date and does not reflect the trading of Pedlars at this current time.

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

No.

- 3. Do you think the permitted size of trolley should be set out in the definition? Please provide reasons for your answer and an indication of any size you think appropriate:–** Agree if a trolley is to be allowed then the size should be stipulated.

Reasons why: Because of the non clarity of the Pedlars Act and courts current day interpretation of the Act, Pedlars are coming with trolleys which are getting bigger and bigger each year. The latest size is 2 metres length by 1.5 metres width and 2.5 metres in height. These trolleys are causing Health and Safety problems, each Pedlar using the trolley is not able to move the trolley safely by themselves and causes problems for the general public. Suggested size, if trolleys are to be allowed, is a maximum of 1 metre square, this would allow sufficient area to display the Pedlars goods and hold sufficient stock for replenishing.

- 4. Do you have alternative suggestions? Please provide them:–**

Pedlars should not be able to use a trolley or similar within areas which are designated under Street Trading Legislation.

- 5. In your view, will updating the certificate as described above make verification and identification of lawful Pedlars easier for enforcement officers? Please give reasons for your answer:-**
Providing an updated secure photo identity certificate which provides verifiable details of the individual and their address would assist Enforcement Officers..
- 6. In your view, is the list of information to be included in a modified certificate complete? If not, please state what information you believe should be added / removed and why:-** Yes the suggested information is sufficient..
- 7. Do you think that a national database of Pedlars' certificates will improve the current system of enforcement and certification? :-** It would be of great benefit to authorities when being asked to issue certificates. Due to the lack of a database at the moment, issuing police authorities are not aware if Pedlars have been convicted of any criminal offences which would stop them receiving a Pedlars certificate. There are Pedlars within our area, South Wales Police Authority, which has been convicted for offences that would stop them being issued with a Pedlars certificate, but because they then go outside the South Wales Police area to another authority they then have their certificates renewed without any problems.
- 8. Do you agree that the list of information to be held on the database is complete and correct? If not, please state what information you would remove / add and why:-** There should be more information held on the database such as – Any advice given to the Pedlars so enforcement officers don't have to rely on what Pedlars will admit too. Any written / Verbal warnings issued to each Pedlar, why and by whom and which authority.
- 9. With reference to section 6 of this document would you support the reintroduction of certification for Pedlar service providers? If so, please say why and provide any evidence in support of your view. If not, please say why:-** Yes would support the reintroduction for service providers. At the moment any trader providing a service, if there are any problems, which is brought to the relevant enforcement officers, then it can be a problem to deal with as we do not have any record of who to contact. There is also more and more problems with people turning up to provide supposed services at people's houses, charge for services but do not complete the work. Some service providers are caught by the

Cancellation of Contracts made in a Consumers Home or Place of Work etc. Regulations 2008

10. Do you think the proposed criteria will offer greater clarity of what is expected of a Pedlar in terms of their suitability to hold a certificate?

:- It will bring better clarity to everyone. Although why should there be a difference between the definition of 'good character' for a Pedlars certificate and that for a Street Trading Licence / Consent.

11. Do you think the proposed criteria will lead to a more consistent approach to refusal of applications from issuing authorities? :- Yes, to have a laid down criteria, it will help in having a uniformed approach from issuing authorities, but will also help to have a means for the right of appeal through the courts to ensure that not only one person is responsible for the final decision of issuing certificates.

12. In your view, should responsibility for issuing pedlars' certificates be transferred from the police to local authorities? Please give reasons for your answer:- Yes it would be a better situation as it is the Local Authorities that deal with Pedlars in the main in day to day work. It could bring uniformity in the type of certificate issued, not the wide range that we have at the moment and varied info shown on each. But the requirement of a PNC check by the police would be essential before issuing of any certificate.

13. Do you think that clear terms for refusal of applications in the legislation, coupled with a right of appeal, are sufficient safeguards to ensure a fair and non-discriminatory certification regime? If not, what alternative or additional safeguards do you think are required? :- Yes as this would be clear to both the Pedlars and to the Authorities to be aware of the full application process and right to appeal and how long this process would take.

14. What are your views on the above option, and how this might affect street trading or Pedlar activity? :- Yes, clarification would provide sufficient safeguards and an appeals mechanism. It should be made sufficiently clear however, that Pedlars have no automatic right to cause nuisance in places where their activities are inappropriate and be fair to local businesses.

15. With further work do you think this option is viable? Please give reasons for your answer:- It will make it easier to apply the same criteria to Street Traders as well as the Pedlars. Any issues of difference in trading i.e. size of trolley, movement etc can be updated in the LG(MA)A.

It would also be better to implement that the issuing of Pedlars certificates be done only by the Local Authority of where the Pedlars reside and not allow them to apply outside to another

16. Are there other ways of maintaining the national access to Pedlar certificates other than under the Pedlars Act? :- The only way would be to bring within the LG(MP)A and having a National Database is essential.

17. What are your views on the above option? Please give reasons for your answer :- This could be a problematic solution, as Local Authorities would have 'Pedlars' turning up and trading when they wanted no matter what Provisions / Special Conditions as they do now and staff would be having to deal with this rather than more essential work. It would not deal with being able to have a central database of Pedlars and the recording of any legal or any other action taken against each trader. Staff would still have to deal with the type of goods these Pedlars were selling and any safety / counterfeiting etc issues. Pedlars would also start to think they have the right to trade no matter what and there would be some that would come on a very regular basis and think that they run that area of trading and tell other Pedlars what they can and cannot do as some are starting to do now and the issue of intimidation would be prevalent.

ENFORCEMENT

18. Which of the above options do you favour? :- Option D

19. Should Local Authority Enforcement Officers be given powers to:
i) Issue fixed penalty notices:-

ii) Seize goods, with forfeiture by order of the Court?:-

Yes. Enforcement of Street Trading Legislation through the courts is an expensive and slow process. The issue of FPN's would be a more effective tool. However, because of the nature of the activities, financial penalties do not provide an effective deterrent. Seizure of goods can be a more effective enforcement tool.

20. If you favour introducing new powers for local authority enforcement officers, can you provide evidence to support this view, particularly in terms of increasing the effectiveness of enforcement in this or

other areas? If you do not support further powers, can you provide evidence to support this view? :- See above

21. Is the list of offences in respect of FPN's complete or correct? If not, please state which offences you would add or take away, and why:-

Yes. Additional offences under both the Pedlars and Street Trading would be a failure to comply with current legislation and to update the Authority, that has provided the certificate, of any changes etc relevant to the issuing of the certificates.

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

Illegal trading activity can be an extremely lucrative business. Pedlars prosecuted as Street Traders are not deterred by court fines and the Authority is forced to apply for injunctions to curtail the nuisance by regular offenders. The limit should be set at a high level in order to provide an effective deterrent. A Level 2 fine of £500 would be an appropriate level for a first time offender.

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

Yes the main perception is correct. In addition, Local Authorities spend a great deal of time and money on maintaining and improving City Centre retail areas to present an image of the City that is harmed by the presence of often unkempt trolley wheeling Pedlars. Local businesses object to the presence of Pedlars on the grounds of the harmful effect on visual amenity.

24. Do you agree that if provision for more enforcement options against illegal street trading and a sufficient demarcation between legitimate Pedlary and other street trading was established (along the lines discussed elsewhere in this document) that this would address the issues of concern to some local authorities in relation to unfair trading and competition? If not, please explain:-

It would help considerably to have a more up to date clarification of the enforcement powers and what Pedlars must comply with, rather than the outdated Pedlars Act. Currently we see Pedlars exploiting the Pedlars Certificates and acting as Street Traders, therefore they should be brought under the LG(MP)A

25. Do you agree that, in some circumstances, restrictions on the number of legitimate Pedlars in specific areas and at specified times are justifiable? If not, please explain why you do not agree:-

It would be of great benefit to be able to specify areas / times when Pedlars could go to specific areas, such as Christmas Markets, Parades, Sporting Events etc. Health and Safety issues of having large amounts of Pedlars

in various areas with trolleys and the public trying to get around causes problems.

26. Do you agree that the list above illustrates the circumstances under which restriction on numbers is justifiable? Do you disagree with any of the listed circumstances, if so why? Would you add any circumstances to the list, if so, which and why? :- Agree with the list

27. Do you have any observations in relation to the ideas aired in the final paragraph above on methodology and notice? To be able to notify Pedlars of any restrictions of the amount of Pedlars / Traders, would require a database of them, so notifications could be sent to them along with publicising on the Authorities own websites of restrictions etc.

28. Not applicable – London Authorities

SERVICES DIRECTIVE

29. If you are aware of any evidence to suggest that the conclusions set out above do not reflect the actual position either in respect of our perceptions of number of Pedlars of services only or in respect of our understanding of the requirements of the service directive, please provide it. Note that a Pedlar of goods and services will need to be certified in order to trade as a Pedlar of goods:- No Comment. Except in the main, services provided by Pedlars going from door to door should be covered by the Cancellation of Contracts made in a Consumers Home or Place of Work etc. Regulations 2008

DRAFT GUIDANCE

30. Is the checklist at the front of the guidance an adequate one-page summary detailing what legal street trading looks like? Please give reasons for your answer including anything you would like to see added or removed:- This is a good checklist and covers all the issues concerned with updating the Pedlars Act and the options of revoking or integrating into the LG(MP)A. Advice on avoiding nuisance by not trading in places designated as prohibited for Street Trading should be given.

31. Do you think the draft guidance meets the needs of the target audience, i.e. enforcers and traders, including Pedlars? Please give reasons for your answer:- Yes as it covers all aspects and possible options open at the moment. If there is going to be guidance which goes away from the understanding that a Pedlar should carry his wares then a

full definition should be stipulated as to the maximum size of trolley which can be used.

32. Do you have suggestions for amendments to the guidance? If so please specify the guidance might be reformatted, added to or subtracted from, and why:- None

33. If you have any other comments or observations, in particular any information on possible costs relating to the options (see Impact Assessment), we are happy to receive them as well:- National Database – Fees and charges should be appropriate to the Pedlars to cover / establish and maintain a National Database and issuing of National uniform certificates. Currently LBRO are establishing a Primary Authority Database and a similar National Database will be required.

The stipulation to Pedlars either if the Pedlars Act is just updated or incorporated into the LG(MP)A 1982 should include:

- Their goods or tools of handicraft are carried on foot on the person or on a trolley pushed or pulled by the person with a carrying capacity of no more than 1 cubic metre subject to:
 - They must not stop in one place for more than 5 minutes.
 - They must then move on at least 200 metres interrupted only by stops for a specific sale.
 - They cannot return to within 5 metres of any of their previous stops in a 12 hour period.
 - They cannot move to a position within 50 metres of another Pedlar with the same authority.
 - They must display their certificate.

SWINDON BOROUGH COUNCIL

Attached are our views on your proposals.

<<SwindonPedlarConsultResponse.pdf>>

Lionel Starling

Head of Licensing

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Please ask for: Lionel Starling
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Email: lstarling@swindon.gov.uk
Our Ref:
Your Ref:

Date: 10 December 2009

—
Dear Sir / Madam

Re: Consultation on review of pedlary laws

Thank you for providing an opportunity to comment on your proposals and to make further suggestions. Below, I have set out comments on your main points and I have highlighted a few areas not mentioned in your report.

1. **Background.** The pedlary laws grew out of a culture in which itinerant traders roamed the country, selling goods on a small scale. In the aftermath of the Second World War, that was still a real phenomenon, with many demobbed and displaced men selling haberdashery and cleaning requisites from suitcases. That culture died out in the 'Sixties though and the so-called pedlars of today are in the main using pedlars' certificates to evade statutory controls on street trading. Pedlars' certificates are an anachronism which should be withdrawn.
2. **Meaning of itinerant.** The largely fictitious rationale of the legislation is that the trader has their main residence in some part of the country a considerable distance away but that they tour from place to place to make a living. Alternatively, that they have no main residence at all and are literally itinerant. That picture of a lifestyle is an inaccurate representation of the reality if in fact they live a bus ride away or trade routinely in one town or city. If some relaxation is allowed to remain, it should be explicitly on the basis that the trader comes from some distant place and is just passing through on the way to somewhere else. In practice, it would be unwise to retain such a formula as it provides obvious and ample scope for subterfuge. Balloon sellers in Swindon typically originate from Totnes but they are not on the way to somewhere else. They head back to Totnes afterwards and the reality is that they pan out across the country from there. That would satisfy a distance test but those sellers are in no sense 'itinerant'. Market traders often also travel large distances from their home or detour via warehousing facilities but they get no regulatory concessions on account of that.



www.swindon.gov.uk

- 3. Issuing agency.** If something equivalent to a pedlars' certificate is retained, it should not be issued from remote police stations by officers who have no knowledge of the place where the certificate is actually going to be used and where they exercise no influence. With no geographical limitations on authorisations, there is always the danger that one issuing office will get a reputation as a 'soft touch' unless the regime is particularly clear and robust.
- 4. Prohibited streets.** If something similar to a pedlar's certificate is to remain in existence, it should be a criminal offence to make use of one in a prohibited street. Such an authorisation would otherwise be used to subvert street trading controls in sensitive areas, as commonly happens now.
- 5. Street hassle.** The regulation of street traders and pedlars cannot be seen in isolation. It is but one factor in maintaining the viability of town centres, by making them pleasant places to visit. Pedlars add to a cacophony of leafleteers, agents signing customers up for photograph portfolios, others doing market research, handing out samples, carrying advertising placards, importuning potential customers on the threshold of mobile phone shops or signing people up for charity direct debits. Taken together, these intrusions strangle town centres and force the public to take refuge in out of town shopping centres. Local authorities need a general power to declare 'no go' zones for all of these activities, as well as being able to limit the scale of these various activities, in those areas where they are allowed in principle.
- 6. Powers.** In relation to street trading in general, explicit powers of arrest and confiscation should be available, whatever the nature of the goods being sold. Use of powers around obstruction may be ambiguous. Reliance on prosecution and use of the Highways Act cannot provide an immediate remedy, when someone is trading illegally.
- 7. Exemptions.** There are some gaps and anomalies evident in the current exemptions from street trading consents and street trading licences. There is already provision for the sale of items solely for the purpose of charitable fund-raising. That should be narrowed in extent, to exclude commercial trading arms. In functional terms, Oxfam shops are commercial undertakings like any other, except that they have a charitable purpose. If they were to run a comparable market stall, they should be regulated accordingly. Charitable exemptions should focus either on the sale of a narrow selection of pins, key-rings or similar items, as part of a street collection or to a cluster of local volunteers selling bric-a-brac for their chosen cause.
- 8. Street entertainers.** Buskers, street artists and balloon sculptors add richness and interest to the street scene and typically sell items directly generated from their activity. In order to make their presence viable, they rely on the sale of CDs of their own work, impromptu portraits etc. Their activity is not comparable with market stalls selling hundreds of different CDs or stalls which sell pictures. Those are market stalls in the ordinary sense and should be properly regulated. Sales which are genuinely incidental to a performance of some kind technically constitute street trading but a de minimis consideration ought to take them out of scope. A light touch approach can be taken under existing legislation but there are still unnecessary burdens. They should be exempted, to promote live music and the arts, provided that they conform with an officially sanctioned local street performer scheme.

- 9. Consumer rights.** One of the particular challenges posed by itinerant traders is that customers are not easily able to exercise consumer redress because by the time they notice a fault or misrepresentation, the trader has gone. The transient nature of the activity is an open invitation to the sale of fake perfume, fake 'Pashmina' scarves, dangerous toys etc. One effective deterrent would be a bond system, requiring the itinerant trader to deposit a significant sum with the local authority, as a guarantee of proper conduct. An alternative would be a national bond and registration system, to which both local authority and customer could apply for remedy or sanction.
- 10. Illegal goods and tax.** A requirement to show paperwork issued by the goods wholesaler would be a disincentive to the supply of stolen or fake items and would assist in ensuring accountability for tax. It would also undermine the involvement of criminal gangs within networks of itinerant traders. The provision of such paperwork should be a formal requirement. Returns should be made to HMRC.
- 11. Prize competitions.** It should be an absolute and arrestable offence to sell a prize competition card in a street. This would deal with a common pest.
- 12. Lookouts.** It should also be made a specific criminal offence to act as a 'lookout' for an illegal street trader.
- 13. Pedlars in services.** If the existing pedlars' certificate scheme is deemed incompatible with the Provision of Services Act 2009, exempted service providers should be brought quickly under a new legislative framework. The chosen route to compliance should not consist of taking pedlars of services out of a regulatory framework but rather by putting all promoters of services into a regulatory framework.
- 14. Establishing identity.** In order to establish their identity when applying for an authorisation, itinerant traders should be required to show the traditional combination of passport / photo driving licence and household utility bills, as well as having a passport size photo on any permit which they hold.
- 15. Movement.** Any stall which moves around within a general area should be subject to the same regulatory scheme as that applied to static stalls. Such movement is currently used as part of a cat-and-mouse game designed to defeat statutory controls. Most stalls are moved for the purpose of avoidance, not for any practical purpose.
- 16. Vehicle stock.** Where a stall is supplied from a vehicle which is been unlawfully parked to provide for constant re-stocking in the vicinity, the street trade which results should be deemed unlawful by extension, even where a permit has been issued. The driver or attendant of any supply vehicle and details of the vehicle should be included in any paperwork. Frequently, 'pedlars' are just a proxy for an illegally parked shop on wheels.
- 17. Small-scale operation.** Any size limitation on a trolley, suitcase etc. adopted as part of a proportionate response will be subverted in many cases if substantial back-up stock is kept in a vehicle. In terms of proportionality, there may be a case for relaxation where there is a combination of a limited product range (e.g. mistletoe) and limited quantity (e.g. one suitcase full of goods). If

very small stands are used to market a stock comparable with that held by a conventional market stall trader, a light touch mechanism will be used for avoidance. Any flexibility should reflect the total amount of stock in play, not just that held on the trolley or in the suitcase.

18. Promotion of services. As things stand, the promotion of services is regarded as a form of street trading in London and is appropriately regulated. Outside London (other than where local Acts apply) the promotion of services does not appear in the definitions and the sector is not subject to a proper regulatory scheme. The London approach should be generalised to cover the whole of England and Wales. In terms of practical impact there are few differences between the sale of goods in the street and the promotion of services in the street. Street traders in Swindon have pointed to the inherent unfairness in a legal distinction which arbitrarily imposes constraints on them, while exempting people who are doing things which are barely any different. Traders in goods are primarily small scale, local businesses. The promoters of services are mainly big companies with a national base. That only serves to strengthen the sense of grievance. From a local authority viewpoint, the regulatory levers available in the case of services are incomplete, outside London or where local Acts apply.

Yours faithfully

Lionel Starling
Head of Licensing

