
**TEES VALLEY LICENSING AUTHORITIES' RESPONSE TO DEPARTMENT OF BUSINESS
INNOVATION & SKILLS (BIS) CONSULTATION IN RESPECT OF STREET TRADING AND
PEDLARY LAWS – COMPLIANCE WITH THE EUROPEAN SERVICES DIRECTIVE**

Purpose of Report

1. To advise Members of the response by of the Tees Valley Licensing Authorities to the BIS consultation into street Trading and Pedlary Laws – Compliance with the EU Services Directive.

Information and Analysis

2. In 2011 BIS first published a consultation on Pedlary and Street Trading – Compliance with EU Services Directive 2006/123/EC. This was concerned with proposals to deregulate the activity of peddling, allowing free and unrestricted trading across the country and also proposed to revise street trading, which to some extent would remove local controls.
3. A joint response to this consultation from all five Tees Valley Licensing Authorities was submitted on 01 September 2011. A copy of this forms part of **Appendix 1**.
4. BIS has now further consulted on the draft regulations to repeal the Pedlars Acts (1871 and 1881) and to amend street trading to secure compliance with the European Services Directive. The consultation closed on 15 February 2013.
5. Given the tight timescales it has not been possible to bring a full consultation report to Members however 4 of the 5 Tees Valley Licensing Authorities have jointly produced a response (**see Appendix 1**) and forwarded it to BIS before the end of the consultation period. The 5th Tees Valley Licensing Authority (Hartlepool) has also indicated support for the response.
6. Durham Constabulary has also responded to the consultation in respect of the issue of deregulation of pedlars. The Police have produced firm evidence to support the rejection of wholesale deregulation including evidence of applications from people with links to criminal activity

Legal Implications

7. There are no issues that the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the response.

Crime and Disorder Act 1998 Section 17

8. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. The contents of the Appendix may impact on this responsibility

Recommendation

9. Members are invited to note the response to the consultation.

Richard Alty
Director of Services for Place

Background Papers

None

Appendices

Appendix 1 The Response the Tees Valley Licensing Authorities to the Department for Business Innovation & Skills' consultation on Street Trading and Pedlary Laws.

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RESPONSE TO BIS CONSULTATION ON DRAFT REGULATIONS – REPEAL OF PEDLARS ACT (UK – WIDE) AND CHANGES TO STREET TRADING LEGISLATION IN ENGLAND & WALES & NORTHERN IRELAND.

This response is sent on behalf of the Tees Valley Licensing Authorities, namely:

Darlington Borough Council,
Hartlepool Borough Council
Middlesbrough Council
Redcar and Cleveland Council
Stockton Borough Council

For reference: A response to the original 2011 consultation was sent by Darlington Borough Council, (by e mail), on behalf of the five Tees Valley Authorities listed above on 01 September 2011. The only one of the Tees Valley Authorities mentioned in Annexe E of the new consultation however is Stockton Borough Council. A further copy of the original response has therefore been included as part of this response given that many of the comments from the 2011 consultation are still valid.

ORIGINAL RESPONSE:

Response to BIS consultation on amending the pedlar and street trading legislation to ensure compliance with the Services Directive 2006/123/EC

1. The above Licensing Authorities (LAs) welcome the opportunity to comment on the above proposals. All 5 LAs consider the legislation pertaining to pedlars is no longer fit for purpose, was drafted at a time when motorised travel was not an option and does not reflect the modern trading environment. Indeed the law is now being defined by the courts. In addition all 5 LAs welcome the opportunity to comment on the current street trading legislation.
2. The general views of the 5 LAs are expressed below and are followed by specific responses to the questions set within the consultation document.
3. The 5 LAs wish to express concern that the proposals to deregulate the activity of peddling, allowing free, unregulated trading throughout the country, is directly opposed to the concept of localism. We believe that there should be one scheme to regulate all forms of trading in the street and that this should be under local control. We believe that the local Council is best placed to determine the needs of local economy and set local policies rather than the Courts who are there to focus on legal issues.
4. Currently none of the pedlars operating in the Tees Valley are from the locality. It is our view that anything other than trading door to door cannot be categorised as peddling (however see 5 below) and should fall within the remit of street trading legislation.

5. Our Trading Standards colleagues have expressed concern that the proposals to permit free, unregulated trading throughout the country flies in the face of the creation of cold calling zones which are being set up to protect the elderly and the vulnerable.
6. We currently have problems with pedlars who visit our town centres and create virtual pitches in direct competition with local traders who have obtained the appropriate consents. This has an impact on our enforcement resources and further deregulation.
7. It is our view that the deregulation of pedlar activities would have serious negative impact on street trading.
8. We would respectfully point out that the legislation pertaining to street trading (Local Government (Miscellaneous Provisions) Act 1982 is adoptive legislation, not prescribed, and therefore consideration needs to be given to those LAs who have chosen not to adopt this legislation.
9. We would support an amendment to street trading to include the provision of services as well as the sale of goods. Such services can range from chair covering, knife sharpening etc to an individual children's amusement ride.
10. Of the 5 LAs above, 4 (Darlington, Middlesbrough, Redcar and Cleveland and Stockton) have only consent and prohibited streets for street trading. Hartlepool has predominantly consent streets but also has a small number of licence streets. We believe that consents are less prescriptive and more flexible.
11. We would respectfully advise that a deregulation on the number of street traders in a vicinity could have the effect of creating a market and therefore impinge on other legislation.
12. Most LAs undertake checks with the local police in respect of applicants for street trading consents. Pedlars do not have such checks and yet often sell goods which are attractive to small children (balloons etc) raising public safety issues.
13. We believe that the fees set for street trading should include the cost of enforcement. We further believe that the LA must be allowed to set a reasonable fee for the processing of applications and that this part of the fee should be non refundable. Currently applications with objections are referred to the Council's Licensing Committee and if refused the entire fee must be refunded. This is placing an undue burden on the LA.
14. The LAs above have responded to the set questions but with the caveats above

Paragraph 24 – definition of pedlar: it is disappointing to note that it is your intention to exempt pedlars from the street trading regime. We cannot support the proposal. It is our belief that there should not be any exemption and there should be local schemes with local controls. In the event that you do not support our view the definition should include the requirement of travels to trade and prohibit any form of setting up a pitch. It should also differentiate between what is street trading and what is not.

Paragraph 26 – pedlars of foodstuffs: we support the inclusion of this activity into the street trading regime. This allows for proper controls in respect of meeting legislative requirements pertaining to the provision of foodstuffs.

Paragraph 29 – controlling pedlar numbers: it is imperative that local controls are in place. The reality is that town centres are flooded with pedlars on specific occasions and complaints are received from members of the public that they are constantly accosted by people selling things, collecting for charities, promoting goods & services etc. Street trading is also controlled to protect local businesses which would be unsustainable if there was no control on the number of pedlars/street traders etc within a vicinity.

Paragraph 35 – justifying requirements for street trading applications: we note the comments about the requirement to provide 2 photographs & agree that one photograph could be sent electronically. We believe that we can therefore justify the application requirements as amended by the provision of electronic means.

Paragraph 42 - mandatory & discretionary grounds for refusal: we note the comments re the removal of age restriction given that it is covered by the Children & young Persons Act 1933 however we would raise the question of who would then enforce this legislation. It seems bizarre to expect the LA to issue a licence that could not be utilised and if the young person is not required to state his/her age this is precisely what could happen under these proposals.

Paragraphs 46-48 - sufficiency of traders: we believe that the removal of this provision would potentially damage local traders and ultimately local people given that itinerant traders may flood the market for a period of time, impacting on local traders who in turn may close. We do not see this sufficiency anti competitive but as a control over the provision of local needs and believe that such decision should be may locally by those who best know the demand within a locality. It could also be physically impossible to accommodate an unregulated number of traders.

Paragraphs 59-65 – time limitations on licences/consents: we believe that it is essential that Councils retain the right to limit the duration of licences/consents. Specific areas of a locality are often subject to a variety of other consents, such as continental markets, Christmas activities (ice rinks) etc and consents provide for building in such limitations. In addition short term consents to accompany such activities can enhance the activity.

Paragraphs 66-68 – power to revoke licences: while the grounds set out are standard reasons for such action (insufficient room in street, unsuitability of licensee, refusal or neglect to pay fees, or failing to use a permit) an overarching provision of power to revoke for “any reasonable cause” would suffice.

Paragraphs 69-73 – time limits for processing applications: we are happy for tacit consent to apply with the time scale to be set locally rather than nationally. It is anticipated that a reasonable time frame of 28 days unless objections in accordance with the provisions of the Licensing Act 2003 in respect of premises licences would apply.

RESPONSE TO DRAFT REGULATIONS – REPEAL OF PEDLARS ACTS (UK – WIDE) /CHANGES TO STREET TRADING NOVEMBER 2012.

Four of the five Tees Valley Authorities (Darlington, Middlesbrough, Redcar and Cleveland and Stockton) met to produce a joint response to this consultation on 10 January 2013. The response to specific questions is detailed below:

Q1: Do you agree with the proposed repeal of the Pedlars Acts 1871 & 1881 UK – wide?

A: Yes with the proviso that pedlars should be brought under the umbrella of street trading as a separate category of trader

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

A: It is likely that retailers, other street traders and the general public may be affected if there is no constraint on the number of pedlars permitted within a specified area.

Q2: Do you agree with our proposed new definition of a pedlar for the purposes of the pedlar exemption fro, the “national” street trading regime in England & Wales? Please fully explain your reasons for agreeing or disagreeing with any element of the proposed definition.

A: We believe that any trading should be caught by the street trading provisions. We are also concerned at the proposed receptacle size in respect of trading other than house to house as with uncontrolled numbers these could quickly destroy heritage areas or other regeneration areas. We also are concerned that if there is not a registration or certification scheme that 2 issues are raised:

(a) how will the pedlar know what is required of them?

(b) who will monitor and enforce pedlar activity (& from where will funding be provided)?

We also express concern that house to house trading flies in the face of Trading Standards efforts to protect the elderly and vulnerable from cold calling.

Q3: If you are a local authority, do you envisage that there might be circumstances in which you would be able to designate a street as a licence/consent street in relation to established traders but not in relation to temporary traders?

A: Yes, in Town Centres, Regeneration areas, Heritage areas where there needs to be a limit because of the physical space available taking into account such matters as street furniture etc.

Q4: Do you agree that only one photo needs to be submitted with street trading applications which are made electronically?

A: Yes.

Q5: *Do you agree with this proposal to replace this mandatory refusal ground? If not, please explain why you do not think that the 1933 Act provides adequate protection and why the minimum age requirement of 17 needs to be retained.*

A: We would refer you to our original response above which we have repeated here for ease:

We note the comments re the removal of age restriction given that it is covered by the Children & Young Persons Act 1933 however we would raise the question of who would then enforce this legislation. It seems bizarre to expect the LA to issue a licence that could not be utilised and if the young person is not required to state his/her age this is precisely what could happen under these proposals.

Q5.1: *If you are a local authority, can you indicate the approximate number of applications you would expect to be made from those under 17 years of age?*

A: It is impossible to estimate as we do not currently receive applications from those under 17 years of age and do not have any experience of such persons making enquiries about street trading.

Q6: *would it be helpful for BIS to issue guidance on the circumstances in which the discretionary grounds in 3(6) (a), (d), (e) and (f) can be used?*

A: Yes subject to detailed consultation on the content of any guidance and its statutory footing.

Q7: *Do you think there are any circumstances in which the existing paragraph 3(6) (b) could be used compatibly with the Directive and, if so please give reasons?*

A: We would refer you to our original response above which we have repeated here for ease:

We believe that the removal of this provision would potentially damage local traders and ultimately local people given that itinerant traders may flood the market for a period of time, impacting on local traders who in turn may close. We do not see this sufficiency anti competitive but as a control over the provision of local needs and believe that such decision should be made locally by those who best know the demand within a locality. It could also be physically impossible to accommodate an unregulated number of traders. We are also aware of (and to a small extent have experienced) the history of “ice cream wars” and “burger van wars” that have in the past blighted the face of street trading and believe that a free for all could raise issues of public security. We are also concerned at the impact lesser controls could have on the health & welfare of the public given the influx of unsafe, untested goods that are frequently on sale by pedlars

Q7.1: *Do you consider that it is necessary to insert a new replacement “suitability” refusal ground into paragraph 3(6)?*

A: We believe that the current refusal ground is sufficiently broad to encompass all eventualities.

Q7.2: *In relation to this new ground can you tell us:*

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

A: As often as is deemed necessary. We would continue to consult with the local police and other enforcement agencies to determine whether or not an applicant is suitable.

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

A: We do not envisage that this would cost any more than the present cost of street trading.

Q8: *Do you think there are any circumstances in which either of these grounds could be used compatibly with the Directive in relation to temporary traders?*

A: We already adapt a flexible approach to temporary traders, e.g. if a busker wishes to sell CDs we will issue a half day street trading consent.

Q8.1: *Do you think it would be preferable to pursue our proposed approach of expressly preventing the grounds from being used in relation to temporary traders or to repeal the grounds completely?*

A: We believe that the ground stated in current legislation should be left untouched to be determined at the discretion of the local authority.

Q8.2: *Will local authorities continue to use these grounds in relation to established traders?*

A: We would be happy to disapply this ground at local discretion. We are however mindful (and have had some experience) of applications being made to prevent others trading in the same area and then not being used.

Q8.3: *Do you foresee any difficulties with our proposals to limit the circumstances in which these grounds can be used in relation to established traders?*

A: No, subject to our response to 8.2 above.

Q9: *Do you foresee any problem resulting from the proposed repeal of paragraph 3(8) of Schedule 4 to the LG (MP) A?*

A: No, however the Tees Valley LAs are not subject to any local Act. Several of our towns are however subject to market charters and this provides an additional level of control over trading on market days

Q9.1: *Do you agree with our assumption that those who may benefit from this provision are more likely to be UK nationals than nationals of other Member States?*

A: As stated we do not have local Acts in the Tees Valley area, however in respect of normal street trading we are unable to identify how many of our traders are UK nationals or otherwise as this is not a question asked on the application form.

Q10: *Do you foresee any problems with our proposal to give local authorities flexibility to grant licences for longer than 12 months or indefinitely?*

A: We do not foresee any problems and believe this would be welcomed by traders who seek security of tenure in response to the provision of high quality trading units.

If you are a local authority can you further tell us:

Q10.1:*whether lengthening the duration of licences would have a positive, negative or neutral impact on the ability of new street traders to obtain licences to trade in your licence streets?*

A: we believe it would have a neutral effect.

Q10.2:(i)*whether you are likely to issue licences for more than a 12 month period or indefinitely?*

A: Yes, in cases where high investment is sought and longer term security is therefore required.

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

A: We do not have a view on a particular time but would require that any time longer than 12 months is subject to an annual fee.

Q11: *Would it be helpful for BIS to issue guidance as to how the Provision of Services Regulations (PSR) may affect local authority's ability to use some or all of the revocation grounds contained in paragraphs 5(1)(a) to (c) in relation to established traders/temporary traders?*

A: Yes subject to detailed consultation on the content of any guidance and its statutory footing

Q11.1:*Do you think there are any circumstances in which the paragraph 5(1)(d)ground could be used compatibly with the Directive in relation to temporary traders?*

A: It would be anti-competitive if someone made multiple applications for an area that could have to restrict numbers because of the physical space and then failed to use the licences. Some of our LAs have had this experience already whereby a trader will seek to obtain multiple consents to ensure his competitors cannot trade and then not use the consents.

Q11.2:*Do you think it would be preferable to pursue our proposed approach of expressly preventing that ground from being used in relation to temporary traders or to repeal the ground completely? Will local authorities continue to use that ground in relation to established traders?*

A: See our response to 11.1 above. We would not use the ground for established traders subject to the avoidance of the situation described in our response to 11.1.

Q11.3: *Do you foresee any difficulties with our proposals to limit the circumstances in which that ground can be used in relation to established traders?*

A: We believe that more detailed rationale needs to be produced to support this proposal

Q12: *Do you foresee any problems with our proposals –*

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

(ii) to leave it to local authorities to decide whether to put arrangements in place to disapply regulation 19(5) in other circumstances or to specify what conditions will automatically attach to a licence which is deemed to have been granted under regulation 19(5)?

A: We believe it should be left to local authorities because of our long experience in dealing with such matters.

Q13: *Do you foresee any problems with our proposals to allow local authorities to relax the prohibition in paragraph 7(7) in its entirety where appropriate?*

A: No we do not.

Q14: *Do you foresee any problems with our proposals to amend paragraph 10(1)(d)?*

A: No we do not.

Please note we have not responded to questions 15-17 as none of the Tees Valley local authorities have a local act to control street trading.

We note however with concern the draft regulations contained within the consultation documentation and trust that a decision has not already been made in respect of the outcome of this consultation.

GENERAL COMMENTS:

We reiterate our concerns at widespread unregulated pedlar activity. On occasion our town centres are flooded with pedlars who create unauthorised pitches and sell unregulated goods. We have issues with the safety and quality of the goods and also with the lack of redress the public experiences with temporary traders who are often only in the town centres at busiest times e.g. Saturdays, Christmas time etc. We currently do not have the financial resources to constantly enforce pedlar legislation and with the removal of any vetting process this would only increase pedlar activity.

We note the response from Durham Constabulary who has been able to cite real cases of refusals of pedlar permits because of suitability issues and we support their view that such deregulation is inappropriate.

We do not see the regulation of pedlars and street trading as anti – competitive and believe that local authorities are best placed to reflect local needs.