

STREET TRADING AND PEDLARY LAWS – CONSULTATION BY DEPARTMENT FOR BUSINESS INNOVATION AND SKILLS.

Relevant Portfolio Holder	Councillors P Mould, Portfolio Holder for Corporate Management and R Blake, Portfolio Holder for Community Safety and Regulatory Services
Portfolio Holder Consulted	Yes
Relevant Head of Service	Claire Felton
Ward(s) Affected	All
Ward Councillor(s) Consulted	N/A
Non-Key Decision	

1. SUMMARY OF PROPOSALS

- 1.1 The Department for Business Innovation and Skills is consulting on the repeal of the Pedlars Acts 1871 and 1881 and changes to street trading legislation. The proposals are as a result of agreement by European Union Member States that the retail sale of goods is a service activity within the EU Directive 2006/123/EC. The consultation is available on the website of the Department for Business, Innovation and Skills at <https://www.gov.uk/government/consultations/street-trading-and-pedlary-laws-a-joint-consultation-on-draft-regulations-to-repeal-the-pedlars-acts-uk-wide-and-make-changes-to-the-street-trading-legislation-in-england-wales-and-northern-ireland>
- 1.2 Publicity around the proposals has raised concern that the repeal of the Pedlary Acts will lead to an increase in door-to-door cold calling and increase the risks of rogue traders and mis-selling.
- 1.3 The Local Government Association has also expressed concern that proposals to amend the street trading legislation will limit Local Authorities' discretion to manage street trading applications in the best interests of their local areas.
- 1.4 Council is asked to consider responding to the consultation. There are 17 questions in the consultation document, many of which are technical. We therefore suggest that the Council's response is co-ordinated by Regulatory Services.

2. RECOMMENDATIONS

The Council is asked to RESOLVE that

Councillors pass their feedback to the Head of Regulatory Services to be included in his response on behalf of the Council.

3. KEY ISSUES

Financial Implications

3.1 There are no direct financial implications arising from this report.

Legal Implications

3.2 The Government considers that amendments to the Street Trading legislation and repeal of the Pedlary laws are necessary in order to comply with the European Directive 2006/123/EC. In 2012 the interpretation of the Directive changed to include the retail sale of goods. At that time the Government indicated the current consultation proposals would be necessary.

3.3 The primary aim of the European Directive is to make it easier for service businesses to set up or sell services anywhere in the European Union. It distinguishes between the service providers established in the UK (an “established trader”) and those seeking to establish themselves, either based in the UK or elsewhere in Europe (a “temporary trader”).

3.4 Article 9 of the Directive applies to established traders and prevents Member States from making access to, or carrying out of, a service activity subject to an authorisation scheme unless certain conditions are satisfied. These include not discriminating against the provider; the need for the authorisation scheme being justified by an overriding public interest such as public policy (but only in specific circumstances) public health, public safety and protection of the environment and urban environment; and if there is no less restrictive measure available.

3.5 Article 16 refers to temporary traders and Member States are prohibited from making access to, or carrying out of a service activity which do not respect the following principles:

- Non-discrimination;
- Necessity – the requirement must be justified for reasons of public health, public security, public policy or the protection of the environment;
- Proportionality.

Repeal of the Pedlars Acts

3.6 Pedlars are currently regulated by the Pedlars Acts 1871 and 1881. A person intending to trade as a pedlar anywhere in the UK must apply for a Pedlars Certificate from the Police and must meet the following criteria (referred to as a certification scheme):

- s/he must have resided in the police area for where they apply for the certificate for at least one month before the application;
- be of good character;
- be above 17 years of age.

3.7 The Government's view is that this certification scheme does not comply with the Directive and cannot be retained because, among other things:

- The certification scheme for pedlars is untenable – it is viewed as too restrictive;
- Not only does the certification scheme contain a residency requirement (banned under the Directive) but the Government has no evidence to support the need to impose an authorisation regime based on a test of “good character”, which would be the most significant remaining criterion.

The Government also does not believe that pedlars should in general be regulated under other schemes. Its preference as set out in the consultation is that it should deregulate pedlary and help pedlars to be freer to trade across the UK.

3.8 The Government had received representations from pedlars to amend the Pedlars Acts rather than repeal them. However, given it does not consider it can retain the certification requirement; this would leave only the definition of Pedlary, which it wishes to modernise in any case.

Street Trading

3.9 The Government is consulting on amending Schedule 4 to the Local Government (Miscellaneous Provisions) Act which sets out the “national” street trading regime. This includes:

- A new definition of a Pedlar for the purposes of the pedlar exemption from the “national” street trading regime;
- A number of changes to the grounds for refusing and revoking street trading licences;
- A potential new power to designate a street as a licence/consent street for established traders and not for temporary traders.

3.10 The Government proposes that the new definition of a pedlar will continue to require them to:

- Travel and trade on foot;
- Either to trade by means of visiting from house to house or if s/he trades by other means (such as trading with pedestrians while travelling through the streets or partly trading on street and partly house to house) to comply with various requirements, which are quite technical and prescriptive in nature.

3.11 The requirements referred to above include carrying all their goods on their person or in a receptacle which is pushed or pulled and defining the size of the receptacle.

3.11.1 Three other limitations are proposed:

- A maximum period of time – 10 minutes – for which a pedlar can remain in a location with a view to trading;
 - A minimum period of time that must elapse before a pedlar can return to trade – 3 hours;
 - A minimum distance that a pedlar must travel between trading points – 50 metres.
- 3.12 When a Council designates a street as a licence street or a consent street, this makes the street subject to an “authorisation scheme” for the purposes of the European Directive.
- 3.13 Currently the designation of a street may only be made in relation to all categories of street trader. The consultation proposes to amend the designation power so that Local Authorities have the power, if appropriate, to designate a street as a licence street/consent street in relation to a more limited category of street trader – those who are not temporary traders. It asks whether local authorities envisage using this power if it was added to the current framework.
- 3.14 The consultation also proposes the following changes in relation to street trading:
- Removing the minimum age requirement (17) for street trading as it is suggested that sufficient protection for children exists in other legislation;
 - Repealing one of the seven discretionary refusal grounds for a street trading licence and amending two others;
 - Extending the duration of street trading licences beyond 12 months.
- 3.15 It is proposed to repeal the refusal ground that there are already enough shops/traders in the street who are trading in the applicant’s goods. The Government’s view is that it is unlikely this ground could be compatible with the Directive as protection of competitors is not an overriding reason relating to the public interest.
- 3.16 The consultation seeks views on whether it is necessary to insert a new refusal ground into the legislation which enables a local authority to refuse a licence application if they are of the view that the street is unsuitable for the trading in which the applicant desires to engage.
- 3.17 The two amended grounds relate to trading for too few days each week and failing to use a previous licence sufficiently.

Service/Operational Implications

- 3.18 If the proposals are implemented unchanged, they would impact adversely on the workload of Regulatory Services. This would be in terms of managing applications for street trading consents and particularly in enforcement of the new requirements for Pedlars, which appear very detailed and bureaucratic.

- 3.19 The proposed changes to Street Trading legislation, especially around the grounds for refusing applications, would require a review of the Council's Street Trading Policy. This seeks to ensure street trading is located where it can make a "positive contribution to add interest, vibrancy and diversity to the area and does not give rise to problems associated with crime and disorder".

Customer/Equalities and Diversity Implications

- 3.20 The Government has carried out its own impact assessment on the proposals in the consultation. However, the Council would need to carry out its own assessment once any changes to legislation are implemented as a result of this consultation.

4. RISK MANAGEMENT

There are no immediate risks for the Council since the proposals are only for consultation at this stage.

5. APPENDICES

None.

6. BACKGROUND PAPERS

Department for Business Innovation and Skills consultation on Street Trading and Pedlary Laws, November 2012.

AUTHOR OF REPORT

Name: Sheena Jones Tel.: 01527 548240
email: sheena.jones@bromsgroveandredditch.gov.uk