



Department  
for Business  
Innovation & Skills

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

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

NOVEMBER 2012

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

## **Executive Summary**

1 This joint consultation between the UK Government, the Northern Ireland Executive and the Scottish Government<sup>1</sup> sets out proposals and draft Regulations (attached at Annex A) to-

(a) amend “national” street trading legislation for England and Wales and for Northern Ireland to ensure that the legislation complies fully with the requirements of the European Services Directive 2006/123/EC (“the Directive”); and

(b) repeal the Pedlars Act 1871 and 1881 in relation to the whole of the UK, again in order to ensure compliance with the Directive.

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

2 Chapter 1 of this document sets out the proposals of the UK Government, the Northern Ireland Executive and the Scottish Government to repeal the Pedlars Acts 1871 and 1881 in relation to England and Wales, Northern Ireland and Scotland in order to secure compliance with the Directive.

3 Chapter 2 sets out the proposals of the UK Government to amend Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 (“the LG(MP)A”) (which sets out the “national” street trading regime for England and Wales), in order to ensure that Schedule 4 complies fully with the Directive . (See Annex A for the draft Regulations.) It also sets out the new definition of pedlary and provides the new legal basis for the exemption of pedlars from the national street trading regime.

4 Chapter 3 of this document deals with consequential amendments that are required to other legislation as a result of some of the above proposals, and also with the screening by local authorities of local street trading legislation in England and Wales against the Directive’s requirements.

5 Chapter 4 of this document sets out the changes that the Northern Ireland Executive proposes to make to the Street Trading Act (Northern Ireland) 2001 (which sets out the street trading regime for Northern Ireland) in order to ensure that their legislation fully complies with the requirements of the Directive. Part 4 of the draft Regulations, attached at Annex A, detail the proposed changes in respect of Northern Ireland.

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

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

## Requirements of the European Services Directive

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

## Repeal of the Pedlars Acts 1871 and 1881

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

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

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

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

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

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

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

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

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

## How to respond

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

### ONLINE RESPONSES

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

### ENGLAND & WALES

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

### EMAIL/WRITTEN RESPONSES & ENQUIRIES TO:

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### NORTHERN IRELAND

You can respond to this Consultation online at:

<https://www.surveymonkey.com/s/amendmentstostreettrading>

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## SCOTLAND

### EMAIL/WRITTEN RESPONSES & ENQUIRIES TO:

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Team: Consumer Policy and Regulation

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

## Additional copies

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

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

Or an electronic version can be found as described above.

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

## Confidentiality & Data Protection

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

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

## Help with queries

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

Rachel Onikosi by email to [Rachel.onikosi@bis.gsi.gov.uk](mailto:Rachel.onikosi@bis.gsi.gov.uk) or by telephone on 020 7215 5898 for England and Wales.

By email to [social.policy@dndi.gov.uk](mailto:social.policy@dndi.gov.uk) for Northern Ireland.

By email to [Walter.drummond-murray@scotland.gsi.gov.uk](mailto:Walter.drummond-murray@scotland.gsi.gov.uk) for Scotland.

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

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

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

## What happens next?



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

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

# Introduction

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

## Wider Intention to Reform the Street Trading Regime

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

## Application and requirements of the Directive:

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

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

## Authorisation Schemes

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

## Established traders

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

## Temporary traders

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Question 1.1:** If you are a Police force:

(i) what is the approximate annual cost of administering the pedlar certification scheme?

(ii) what impacts would repeal of the Acts have in terms of cost, time and/ or other factors?

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

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

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

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

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

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

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

#### Proposed New Definition of a Pedlar

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

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

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

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

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

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



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

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

**Question 2:**

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

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

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

**Question 3:**

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

## Regulation 6 – Applications for street trading licences

### *Electronic applications*

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

**Question 4:**            **Do you agree that only one photo needs to be submitted with street trading applications which are made electronically?**

### *Mandatory ground for refusing a street trading licence – minimum age*

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

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

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

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

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

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

**Question 5:** Do you agree with this proposal to replace this mandatory refusal ground? If not, please explain why you do not think that the 1933 Act provides adequate protection and why the minimum age requirement of 17 needs to be retained.

**Question 5.1:** If you are a local authority, can you indicate the approximate number of applications you would expect to be made from those under 17 years of age?

### ***Discretionary grounds for refusing a street trading licence***

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

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

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

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

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

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

<b>Question 7:</b>	<b>Do you think there are any circumstances in which the existing paragraph 3(6)(b) ground could be used compatibly with the Directive and, if so, please give reasons.</b>
<b>Question 7.1:</b>	<b>Do you consider that it is necessary to insert a new replacement “suitability” refusal ground into paragraph 3(6)?</b>
<b>Question 7.2:</b>	<b>In relation to this new ground can you tell us:</b>  <b>(i) in what circumstances you would use this ground and how often?</b>  <b>(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?</b>

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

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

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

**Question 8:** **Do you think there are any circumstances in which either of these grounds could be used compatibly with the Directive in relation to temporary traders?**

**Question 8.1:** **Do you think it would be preferable to pursue our proposed approach of expressly preventing the grounds from being used in relation to temporary traders or to repeal the grounds completely?**

- Question 8.2:** Will local authorities continue to use these grounds in relation to established traders?
- Question 8.3:** Do you foresee any difficulties with our proposals to limit the circumstances in which these grounds can be used in relation to established traders?

### ***Preferential treatment for persons previously licensed under local Acts***

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

- Question 9:** Do you foresee any problem resulting from the proposed repeal of paragraph 3(8) of Schedule 4 to the LG(MP)A?
- Question 9.1:** Do you agree with our assumption that those who may benefit from this provision are more likely to be UK nationals than nationals of other Member States?

### **Regulation 7- Duration of street trading licences**

- 1.44 Paragraph 4(6) of Schedule 4 to the LG(MP)A provides that a licence is to remain valid for 12 months from its grant or for such shorter period as is specified in the licence. We propose to amend this provision to ensure that a local authority can grant a licence for a longer period or indefinitely if appropriate.
- 1.45 This is because, in relation to established traders, Article 11(1) of the Directive (which is implemented by regulation 16(1) of the PSR) precludes an authorisation from being granted for a limited period, except in certain circumstances<sup>2</sup>. Since we do not know whether a local authority will be able to rely on one of the exceptions to the rule that a licence be granted indefinitely in relation to every application it receives from an established trader, we think that authorities should have flexibility to grant licences for longer than 12 months or indefinitely.

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

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

**Question 10:**                    **Do you foresee any problems with our proposal to give local authorities flexibility to grant licences for longer than 12 months or indefinitely?**

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

**Question 10.1:**                **Whether lengthening the duration of licences would have a positive, negative or neutral impact on the ability of new street traders to obtain licences to trade in your licence streets?**

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

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

## **Regulation 8 – revocation of street trading licences**

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



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

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

<b>Questions 11</b>	<b>Would it be helpful for BIS to issue guidance as to how the PSR may affect local authority's ability to use some or all of the revocation grounds contained in paragraphs 5(1)(a) to (c) in relation to established traders/temporary traders?</b>
<b>Questions 11.1</b>	<b>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?</b>
<b>Questions 11.2</b>	<b>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?</b>
<b>Questions 11.3</b>	<b>Do you foresee any difficulties with our proposals to limit the circumstances in which that ground can be used in relation to established traders?</b>

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

1.51 In essence, regulation 19(5) of the PSR has the effect that, if an established trader's licence application is not processed within the period required by regulation 19, the licence will be deemed to have been granted by the local authority unless there are different arrangements in place. Such different arrangements must be justified by ORRPIs, including a legitimate interest of third parties (regulation 19(6) of the PSR). Schedule 4 to the LG (MP) A does not currently make any such different arrangements.

1.52 Since there will remain mandatory grounds for refusing a street trading licence (in paragraph 3(4) of Schedule 4 as we propose to amend it – see paragraphs 1.29 – 1.32 above), we propose to insert a new provision into paragraph 6 of Schedule 4 to the LG (MP)A to automatically disapply regulation 19(5) of the PSR in relation to a licence application where a mandatory ground for refusal of the application applies.

1.53 Local authorities may also wish to put in place administrative arrangements disapplying regulation 19(5) of the PSR in relation to licence applications where no mandatory ground for refusal of the application applies (assuming such arrangements can be justified by one or more ORRPIs). Local authorities who do not put in place such arrangements may also wish to specify administratively the conditions that will automatically attach to a street

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

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

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

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

**Please give reasons for your views.**

## **Regulation 10 - Street trading consents**

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

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

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

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

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

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

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

**Question 13: Do you foresee any problems with our proposals to allow local authorities to relax the prohibition in paragraph 7(7) in its entirety where appropriate?**

*Duration of street trading consents*

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

**Regulation 11 – offences**

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

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

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

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

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

**Implementation options:**

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

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

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

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

**Question 15:** **Please can local authorities tell us about any other local Acts regulating street trading which are not listed at Annex B of this document (or any Acts listed in Annex B which have in fact been repealed).**

**Question 15.1:** **Please can local authorities tell us-**

**(i) whether, having screened your local street trading Acts for compliance with the Directive, amendments/repeals need to be made to that legislation;**

**(ii) if such amendments/ repeals are needed whether you wish us to include them in our regulations.**

**IMPLEMENTATIONS OPTIONS:**

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

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

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

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

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

**Question 16:**            **Can local authorities tell us-**

- (i) what consequential amendments are needed to the provisions listed in Annex C as a result of the repeal of the Pedlars Acts (and provide appropriately drafted provisions);

**(ii) whether any consequential amendments are needed to other provisions of local Acts as a result of the repeal of the Pedlars Acts (and, if so, provide appropriately drafted provisions);**

**(iii) if any of the provisions listed in Annex C are no longer in force.**

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

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

**Question 17: Can local authorities tell us-**

(i) what consequential amendments are required to the provisions of local Acts listed above at paragraph 1.73 as a result of our proposed amendments to Schedule 4 to the LG(MP)A, and provide appropriately drafted provisions?

(ii) whether (and, if so, what) consequential amendments are required to any other provisions of local Acts as a result of our proposed amendments to Schedule 4 to the LG(MP)A (and again provide appropriately drafted provisions)?

## Consultation Questions: England and Wales

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

We would like all consultees to fully consider our proposals and **explain the reasons for your answers as fully as possible.**

### Repeal of the Pedlars Acts:

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

**Question 1.1** If you are a **police force**:

(i) what is the approximate annual cost of administering the pedlar certification scheme?

(ii) what impacts would repeal of the Acts have in terms of cost, time and/ or other factors?

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

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

**Question 2:** Do you agree with our proposed new definition of a pedlar for the purposes of the pedlar exemption from the “national” street trading regime in England and Wales? Please fully explain your reasons for agreeing or disagreeing with any element of the proposed definition.



## Amendments to Schedule 4 to the LG(MP)A

- Question 3:** If you are a local authority, do you envisage that there might be circumstances in which you would be able to designate a street as a licence/ consent street in relation to established traders but not in relation to temporary traders? (paragraphs 1.25 – 1.27)
- Question 4:** Do you agree that only one photo needs to be submitted with street trading applications which are made electronically? (see paragraph 1.28 above)
- Question 5:** Do you agree with the proposal to replace the mandatory refusal ground? If not, please explain why you do not think that the 1933 Act provides adequate protection and why the minimum age requirement of 17 needs to be retained. (Paragraph 1.32).
- Question 5.1:** If you are a local authority, can you indicate the approximate number of applications you would expect to be made from those under 17 years of age?
- Question 6:** Would it be helpful for BIS to issue guidance on the circumstances in which the discretionary grounds in 3(6) (a), (d), (e) and (f) can be used? (see paragraphs 1.33 and 1.34 above).
- Question 7:** Do you think there are any circumstances in which the existing paragraph 3(6)(b) ground could be used compatibly with the Directive and, if so, please give reasons. (see paragraphs 1.36 -1.37).
- Question 7.1:** Do you consider that it is necessary to insert a new replacement “suitability” refusal ground into paragraph 3(6)? (see paragraph 1.38)
- Question 7.2:** In relation to this new ground, can you tell us:
- (i) In what circumstances you would use this ground and how often?
  - (ii) Whether this ground would produce costs on you as a local authority, or on you as a business and what these costs are likely to be?
- Question 7.3:** Would it be helpful for BIS to issue guidance on the circumstances in which this replacement ground could be used?
- Question 8:** Do you think there are any circumstances in which either of these grounds could be used compatibly with the Directive in relation to temporary traders? (see paragraphs 1.39 -1.42)
- Question 8.1:** Do you think it would be preferable to pursue our proposed approach of expressly preventing the grounds from being used in relation to temporary traders or to repeal the grounds completely?

- Question 8.2:** Will local authorities continue to use these grounds in relation to established traders?
- Question 8.3:** Do you foresee any difficulties with our proposals to limit the circumstances in which these grounds could be used in relation to established traders?
- Question 9:** Do you foresee any problem resulting from the proposed repeal of paragraph 3(8) of Schedule 4 to the LG(MP)A? (see paragraph 1.43)
- Question 9.1:** Do you agree with our assumption that those who may benefit from this provision are more likely to be UK nationals than nationals of other Member States?
- Question 10:** Do you foresee any problems with our proposal to give local authorities flexibility to grant licences for longer than 12 months or indefinitely? (see paragraphs 1.44 – 1.47)

If you are a local authority can you further tell us

- Question 10.1:** Whether lengthening the duration of licences would have a positive, negative or neutral impact on the ability of new street traders to obtain licences to trade in your licence streets?
- Question 10.2:** (i) Whether you are likely to issue licences for more than a 12 month period of indefinitely?
- (ii) If you are likely to issue licences for a defined period which is longer than 12 months, what period you are likely to choose?
- Question 11:** Would it be helpful for BIS to issue guidance as to how the PSR may affect a local authority's ability to use some or all of the revocation grounds contained in paragraphs 5(1)( a) to ( c) in relation to established traders/temporary traders? (see paragraphs 1.48 – 1.50)
- Question 11.1:** Do you think there are circumstances in which the paragraph 5(1)(d) ground could be used compatibly with the Directive in relation to temporary traders?
- Question 11.2:** Do you think it would be preferable to pursue our proposed approach of expressly preventing that ground from being used in relation to temporary traders or to repeal the ground completely? Will local authorities continue to use that ground in relation to established traders?
- Question 11.3:** Do you foresee any difficulties with our proposals to limit the circumstances in which that ground can be used in relation to established traders?
- Question 12:** Do you foresee any problems with our proposals -

- (i) To disapply regulation 19(5) of the PSR where a mandatory ground for refusal of the application exists; or
- (ii) To leave it to local authorities to decide whether to put arrangements in place to disapply the regulation in other circumstances, or to specify what conditions will automatically attach to a licence which is deemed to have been granted under regulation 19(5)? Please give reasons for your views (see paragraphs 1.51 – 1.53)

**Question 13:** Do you foresee any problems with our proposals to allow local authorities to relax the prohibition in paragraph 7(7) in its entirety where appropriate? (see paragraphs 1.54 -1.57)

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

**Question 15:** Please can local authorities tell us about any other local Acts regulating street trading which are not listed at Annex B of this document (or any Acts listed in Annex B which have in fact been repealed).

**Question 15.1:** Please can local authorities tell us-

(i) whether having screened your local street trading Acts for compliance with the Directive, amendments /repeals need to be made to that legislation;

(ii) if such amendments/ repeals are needed whether you wish us to include them in our regulations.

**Question 16:** Please can local authorities tell us-

- (i) what consequential amendments are needed to the provisions listed in Annex C as a result of the repeal of the Pedlars Acts (and provide appropriately drafted provisions);
- (ii) whether any consequential amendments are needed to other provisions of local Acts as a result of the repeal of the Pedlars Acts (and, if so, provide appropriately drafted provisions);
- (iii) if any of the provisions listed in Annex C are no longer in force.

**Question 17:** Can local authorities tell us-

- (i) what consequential amendments are required to the provisions of local Acts listed above at paragraph 1.73 as a result of our proposed amendments to Schedule 4 to the LG(MP)A, and provide appropriately drafted provisions?
- (ii) whether (and, if so, what) consequential amendments are required to any other provisions of local Acts as a result of our proposed amendments to Schedule 4 to the LG(MP)A (and again provide appropriately drafted provisions)?

## Chapter 4 - Proposals to amend the Street Trading Act

### (Northern Ireland) 2001– (see Annex A)

1.77 Below we detail our proposals for amending the Street Trading Act (Northern Ireland) 2001 (“the Street Trading Act”) to ensure compliance with the European Services Directive (“the Directive”). A copy of the draft regulations is attached at Annex A.

#### **Regulation 13- Activities which are not street trading - Exemption for Pedlars from the street trading licensing regime**

1.78 This amendment takes account of the repeal of the Pedlars Acts 1871 and 1881. It provides a new definition of a pedlar who will be exempt from the requirement to have a street trading licence. (See regulation 13, Annex A, Part 4).

#### **Why this amendment is being introduced**

1.79 The Department for Business, Innovation and Skills (BIS) holds policy responsibility for the Pedlars Acts 1871 and 1881. The Acts however extend across the entire UK (UK wide law). Northern Ireland has agreed that the repeal of the Acts should extend to Northern Ireland on the basis that the certification regime for pedlars does not comply with the requirements of the Directive – (Chapter 1 of this document, paragraphs 1.2 - 1.11 sets out the reasons why the Act is considered non compliant and Part 2 of the Regulations (Annex A) refers.

(Questions 1 – 3 in the consultation survey relate to respondents details)

<b>Question 4:</b>	<b>Do you agree with the repeal of the Pedlars Acts 1871 and 1881 in relation to Northern Ireland? Please provide any comments you may have.</b>
<b>Question 5:</b>	<b>If you are a pedlar : Do you foresee any potential impacts of the repeal of the Pedlars Acts, both in terms of cost, time and/or any other factors? Please provide any comments you may have.</b>
<b>Question 6:</b>	<b>Do you consider that the repeal of the Pedlars Acts 1871 and 1881 would have an impact on any other organisation, individual or group? Please provide any comments you may have.</b>

1.80 We also consider that placing restrictions which have the effect of making certain pedlars subject to the street trading licensing regime, for example restricting pedlary to house to house trading, does not comply with the Directive. Regulation 13 provides a new definition of a pedlar which we believe will help pedlars, street traders and councils properly identify behaviours carried out by pedlars which constitute illegal street trading. Such illegal trading will be subject to sanctions available under the Street Trading Act.

#### **Proposed new definition of a pedlar**

- 1.81 The nature of pedlary is that a pedlar travels and trades on foot. We propose that the new definition continues to include a requirement that a pedlar trades only on foot. In addition, a pedlar will be required either -
- (a) to trade by means of visits from house to house; or
- (b) if he trades by other means (i.e. trading with pedestrians while travelling through the streets) or partly by other means (i.e. partly trading with pedestrians while travelling through the streets and partly trading from house to house), to comply with various requirements explained below.
- 1.82 Firstly, the pedlar must either carry all his goods on his person without any means of support, or all such goods must be carried in or on a receptacle (which may or may not be wheeled) which he pushes or pulls. In addition, the combined dimensions of that receptacle together with any articles in or on it must not exceed the specifications below.
- 2 metres high
  - 1 metre long
  - 1 metre wide
- 1.83 The purpose of these requirements is to ensure that pedlars do not use receptacles/displays for their goods which are unduly large and cumbersome and likely to cause obstruction to others using the streets. (In addition, these requirements enable a pedlar who is unable for any reason to carry goods about his person to use a reasonably sized receptacle to carry the goods).
- 1.84 The receptacle must be pushed or pulled by the pedlar since the nature of pedlary is that the pedlar keeps on the move.
- 1.85 We believe that the maximum measurements we are proposing are more than adequate for the purposes of any individual pedlar wishing to transport and display a reasonable amount of goods for sale whilst keeping on the move. The size of the receptacle/display must be limited to balance the rights of pedlars to trade with the rights of other street users and the need to keep the streets reasonable clear of obstructions. We believe that the maximum measurements we are proposing strike a reasonable compromise.
- 1.86 As the nature of pedlary is that a pedlar travels and trades while on the move, we propose three further general limitations on the manner in which a pedlar may trade: firstly, a maximum period of time for which a pedlar can remain in a location with a view to trading; secondly, a minimum period of time that must elapse before a pedlar can return (with a view to trading) to a location which he has previously occupied with a view to trading; and thirdly, a minimum distance that a pedlar must travel from a location he recently occupied with a view to trading. These limitations, and the exceptions we are proposing to them, are explained in greater detail below.
- 1.87 We propose that a pedlar can remain static in the same location for a maximum of 10 minutes after his arrival there. He should then move on (at a reasonable speed) to a location which is at least 50 metres away from the first location, and again he should remain in that second location for no more than 10 minutes. He cannot immediately return

to the first location since he cannot return to a location he has previously occupied within 3 hours of leaving that location. Nor can he occupy a location within 50 metres of any location he has occupied during the previous 3 hours. These requirements are intended to keep a pedlar trading while on the move.

- 1.88 However, we do recognise that a pedlar may be approached by one or more potential customers during the 10 minute period mentioned above but be unable to conclude the transaction with that customer during that period. Similarly, we recognise that a pedlar may be approached by one or more potential customers while travelling from one location to a location at least 50 metres away. Since we do not want to place unreasonable restrictions on a pedlar's ability to do business, we propose an exception to the above limitations to enable a pedlar who is approached in this way to remain in his location beyond the 10 minute period or to stop to conclude those transactions. Once all such transactions have been concluded (or aborted) the pedlar must continue to move away immediately.
- 1.89 So, if the pedlar is not actively making a sale or being approached by a customer at the 10 minute cut-off point, he must immediately start to move away from the location towards a location at least 50 metres away from that location. If, while on the move to his next location, he is approached by a customer, he may stop to deal with that customer. But, as soon as the sale is concluded, he should continue on the move towards his next location (unless, of course, he is approached again by another customer on his way there).
- 1.90 The draft regulations set out how distance is to be measured for the purposes of the 50 metres minimum distance requirement.

**Question 7:** Please indicate whether you would agree or disagree with the proposed new definition of a pedlar for the purposes of the pedlar exemption from the street trading regime in Northern Ireland. Please fully explain your reasons for agreeing or disagreeing with any element of the proposed definition.

### **Regulation 14(2) – Licensing of street traders: Applications for the grant, renewal or variation of street trading licences - providing date of birth**

- 1.91 This draft regulation removes the requirement in section 5(4)(a) for an applicant for a street trading licence to provide their date of birth. (See regulation 14(2) at Annex A, Part 4).

#### **Why this amendment is being introduced**

- 1.92 Article 15 of the Directive (Regulation 22 of the Provision of Service Regulations 2009) (PSR) does not allow the exercise of a service activity to be made subject to a requirement that a provider of a service must take a specific legal form (unless certain conditions are met).

- 1.93 Section 8(1)(a) of the Street Trading Act provides that an application for a street trading licence must be refused when the applicant is not an individual. We do not think that we can justify retaining this requirement, so we therefore propose to amend section 5(4) (a).
- 1.94 This regulation will therefore remove the requirement for an applicant to provide their date of birth, and it is consequential to the removal of section 8(1) (a) of the Street Trading Act. (See regulation 16 at Annex A, Part 4).

**Question 8:** The proposed amendment to the Act would remove the requirement for an applicant for a street trading licence to provide their date of birth. Please indicate whether you would agree or disagree with this proposal. Please provide any comments you may have.

### **Regulation 14(3) – Licensing of street traders: Applications - requirement to include photographs with an application**

- 1.95 This regulation will require an applicant to submit one photograph when an application for a street trading licence is made electronically and to submit two photographs in any other case.

#### **Why this amendment is being introduced**

- 1.96 Article 8 of the Directive (Regulation 32 of the PSR) requires that all procedures and formalities relating to access to a service activity should be capable of being completed by electronic means.
- 1.97 Under section 5(5) of the Street Trading Act a council may request two photographs of the applicant together with an application made in writing. Although in practice this does not prevent applications being made electronically we think it is sensible to amend the provision to expressly refer to the option of submitting applications electronically, together with one photograph, but two photographs in any other case.
- 1.98 This regulation will provide clarity for applicants and comply with the requirements of Article 8 of the Directive. (See regulation 14(3) at Annex A, Part 4).

**Question 9:** The proposed amendment to the Act would require an applicant to provide only one photo where an application for a street trading licence is made electronically. Please indicate whether you would agree or disagree with this proposal. Please provide any comments you may have.

### **Regulation 14(4) – Licensing of street traders: Applications - a new provision to ensure that applications for street trading licences not processed in time are not deemed to have been granted in certain cases**

- 1.99 This regulation will insert a new section 5(9) to ensure that applications not processed sufficiently quickly are not deemed to have been granted where a mandatory ground for refusing the application exists. (See regulation 14(4) at Annex A, Part 4).

## Why this amendment is being introduced

- 1.100 Regulation 19 (5) of PSR which implements Article 13(4) of the Directive has the effect that a street trading licence will be deemed to have been granted where the application has not been processed within the period required by regulation 19, unless different arrangements (which must be justified by an overriding reason relating to public interest (ORRPIs), including a legitimate interest of third parties) are in place. The Street Trading Act does not currently make any such different arrangements.
- 1.101 We propose to insert a new section 5(9) in the Street Trading Act to automatically disapply regulation 19(5) of the PSR in relation to a licence application where a mandatory ground for refusal of the application applies.
- 1.102 Councils may wish to consider whether they also wish to put in place administrative arrangements disapplying regulation 19(5) of the PSR in relation to licence applications where no mandatory ground for refusal of the application applies (assuming such arrangements can be justified by one or more ORRPIs). Councils who do not put in place such arrangements may also wish to consider whether to specify administratively the conditions that will automatically attach to a street trading licence which is deemed to have been granted under regulation 19(5) of the PSR (as a result of the application not having been processed in time).

**Question 10:** Please indicate whether you would agree or disagree with the following proposals:

- (i) to disapply regulation 19(5) of the Provision of Services Regulations 2009 where a mandatory ground for refusal of the application exists;
- (ii) to leave it to councils to decide whether to put arrangements in place to disapply regulation 19(5) in other circumstances; or
- (iii) to leave it to councils to specify the conditions which will attach to a licence which is deemed to have been granted under regulation 19(5).

Please provide any comments you may have.

## Regulation 15 – Grant etc. of street trading licence – duration of licence

- 1.103 This regulation will provide a power for councils to limit the duration of a licence for both established and temporary traders to whatever time period they consider appropriate. It also provides an additional power to grant a licence indefinitely. (See regulation 15 at Annex A, Part 4).

## Why this amendment is being introduced

- 1.104 Section 6(4) of the Street Trading Act provides that a licence may be granted for a period of no longer than 3 years, after which time they become renewable.
- 1.105 Article 11(1) of the Directive (Regulation 16 of the PSR), which applies to established traders, states that authorisations should not be granted for a limited period unless in



certain circumstances. We have considered those circumstances and have concluded that it would prove extremely difficult for a council to be able to rely on those grounds in every case.

1.106 In relation to temporary traders, Article 16 of the Directive (Regulation 24 of the PSR) stipulates a stringent test to be met before a time limit can be imposed on an authorisation. We again cannot see how limiting the duration of a licence in respects of temporary traders could on all occasions be justified. Notably, the handbook to the Directive recognises these difficulties by stating that limiting the duration of authorisations may be necessary to promote equal access to the market.

**Question 11:** Please indicate whether you would agree or disagree with the proposal to give councils the flexibility to grant licences for longer than 3 years or indefinitely? Please provide any comments you may have.

The following questions need only be completed by councils

**Question 12:** Please indicate whether you think the proposal to lengthen the duration of licences would have a positive, no effect or negative impact on the ability of new street traders to obtain licences to trade. Please provide any comments you may have.

**Question 13:** As a council are you likely to issue street trading licences for longer periods (i.e. for longer than 3 years or indefinitely)?

**Question 14:** If you responded “likely” please indicate the time frame you would choose and give reasons for your views.

### **Regulation 16 - Mandatory grounds for refusing an application - an applicant must be an individual**

1.107 This regulation will remove the requirement that an applicant for a street trading licence must be an individual.

#### **Why this amendment is being introduced**

1.108 Article 15(2)(b) of the Directive (Regulation 22 of the PSR) does not allow the exercise of a service activity to be made subject to a requirement that a provider of a service must take a specific legal form, unless certain conditions are met. Section 8(1)(a) of the Street Trading Act provides that an application for a street trading licence must be refused when the applicant is not an individual. We do not think that we can justify this requirement and are therefore repealing section 8(1)(a). (See regulation 16 at Annex A, Part 4).

1.109 This amendment will not impact on the requirement for a licence holder to carry the relevant licence with them at all times they are engaged in trading. The licence holder will be responsible for trading in compliance with the conditions of a licence and, in the event of any breach of conditions, may be the person against whom action may be taken.

**Question 15:** Please indicate whether you would agree or disagree with the proposal to remove the requirement that an applicant for a street trading licence is an individual. Please provide any comments you may have.

**Regulation 17(3)- Discretionary grounds for refusing an application– repeal of section 9(1)(a)(iv) - sufficient traders**

1.110 This regulation will remove the discretion from a council to refuse to grant a licence because there are already enough shops/street traders trading in the articles, things or services in which the applicant wishes to trade. (See regulation 17(3) at Annex A, Part 4).

**Why this amendment is being introduced**

1.111 Article 14(5) of the Directive (Regulation 21(1)(e) of the PSR) prohibits the case-by-case application of an economic test making the granting of a licence subject to proof of the existence of an economic need or market demand.

1.112 We consider that it is extremely unlikely that this discretionary ground for refusing an application can ever be used compatibly with the Directive, both in relation to established traders and in relation to temporary traders.

1.113 As regards established traders, this ground is extremely likely to fall foul of Article 14(5) of the Directive because it involves a case-by-case assessment of the existence of an economic need or market demand.

1.114 In relation to temporary traders, we cannot envisage any circumstances in which any of the four possible justifications listed in Article 16 (public policy, public security, public health and protection of the environment) could justify refusing an application on this discretionary ground.

1.115 Further, the inevitable effect of refusing a licence on this ground is to protect the business of existing traders in the applicant's goods. (Protection of competitors cannot qualify as an ORRPI for the purposes of Article 10(2) (b) of the Directive).

**Question 16:** In your view, are there any circumstances in which the discretionary ground for refusing an application in section 9(1) (a) (iv) can be used compatibly with the Directive? If you responded "Yes" to the above question, please provide any comments you may have.

**Regulation 17(4) - Discretionary ground for refusing an application - insufficient use of licence- section 9(1)(d) of the Street Trading Act**

1.116 This regulation will remove, in relation to a temporary trader, the discretionary ground for refusing an application on the ground that the applicant had failed to avail himself of a

previous licence to a reasonable extent. It will also insert conditions that must be satisfied if this ground of refusal is used in relation to established traders. (See regulation 17(4) at Annex A, Part 4).

### **Why this amendment is being introduced**

1.117 In our view, it is very unlikely that this ground of refusal could ever be used compatibly with the Directive (Article 16) in relation to temporary traders.

1.118 We think that it may be possible to use this ground compatibly with the Directive in relation to established traders. However, we consider reliance on this ground would be dependent on demand from other would-be traders to trade in the street in question on the days / times specified in the application and on a council being prepared to grant a licence to another such trader.

**Question 17:** In your view, are there any circumstances in which the discretionary ground for refusing an application under section 9(1)(d) can be used compatibly with the Directive in relation to temporary traders? Please provide any comments you may have.

**Question 18:** In your view, would it be preferable to pursue the proposed approach of expressly preventing section 9(1)(d) from being used in relation to temporary traders, or to repeal the ground completely? Please provide any comments you may have.

The following questions need only be completed by councils

**Question 19:** As a council, are you likely to continue to use the discretionary ground in section 9 (1) (d) in relation to established traders? Please provide any comments you may have.

**Question 20:** Do you foresee any difficulties with the proposal to limit the circumstances in which this discretionary ground can be used in relation to established traders? Please provide any comments you may have.

### **Regulation 18(3) - Revocation, etc. of street trading licences**

1.119 This regulation will prevent a council from revoking a temporary trader's licence on the ground that he is not availing himself of his licence to a reasonable extent in relation to a temporary trader. It will also impose conditions on the use of this ground in relation to established traders. We propose to take the same approach as we are taking in relation to the discretionary refusal ground in section 9(1) (d) (see paragraph 1.116 – 1.118 above). (See regulation 18(3) at Annex A, Part 4).

**Question 21:** In your view, are there any circumstances in which the discretionary ground for revoking an application under section 10(1)(c) can be used compatibly with the Directive in relation to temporary traders? Please provide any comments you may have.

**Question 22:** In your view, would it be preferable to pursue the proposed approach of expressly preventing section 10(1) (c) from being used in relation to

**temporary traders or to repeal the ground completely? Please provide any comments you may have.**

**The following questions need only be completed by councils.**

**Question 23: As a council, are you likely to continue to use the discretionary ground in section 10(1)(c) in relation to established traders? Please provide any comments you may have.**

**Question 24: Do you foresee any difficulties with the proposal to limit the circumstances in which this discretionary ground can be used in relation to established traders? Please provide any comments you may have.**

### **Regulation 19(2) – Temporary licences - requirement to include photographs**

1.120 This regulation will require an applicant to comply with a council's request to submit one photograph when an application for a temporary licence is made electronically and to submit two photographs in any other case. (See regulation 19(2) at Annex A, Part 4).

#### **Why this amendment is being introduced**

1.121 Article 8 of the Directive requires that all procedures and formalities relating to access to a service activity should be capable of being completed by electronic means.

1.122 As regards applications for temporary licences, section 14(2)(c) allows a council to request two photographs of the applicant together with an application made in writing. Although in practice this does not prevent applications being made electronically we think it is sensible to amend the provision to expressly refer to the option of submitting applications electronically, together with one photograph, but two photographs in any other case.

1.123 This will provide clarity for applicants and comply with the requirements of Article 8.

**Question 25: Do you agree or disagree with the proposal that only one photo needs to be submitted with an application for a temporary licence which is made electronically? Please provide any comments you may have.**

### **Regulation 19(3) – Temporary licences - a new provision to ensure that applications for temporary street trading licences not processed in time are not deemed to have been granted in certain cases**

1.124 This regulation will insert a new section 14(4A) to ensure that applications not processed sufficiently quickly are not deemed to have been granted where a mandatory ground for refusing the application exists. (See regulation 19(3) at Annex A, Part 4).

### **Why this amendment is being introduced**

1.125 Regulation 19 (5) of PSR which implements Article 13(4) of the Directive has the effect that a street trading licence will be deemed to have been granted where the application has not been processed within the period required by regulation 19, unless different arrangements (which must be justified by an overriding reason relating to public interest, including a legitimate interest of third parties) are in place. The Street Trading Act does not currently make any such different arrangements.

1.126 We propose to insert a new section 14(4A) in the Street Trading Act to automatically disapply regulation 19(5) of the PSR in relation to an application for a temporary street trading licence where a mandatory ground for refusal of the application applies.

1.127 Councils may wish to consider whether they also wish to put in place administrative arrangements disapplying regulation 19(5) of the PSR in relation to applications for temporary street trading licences where no mandatory ground for refusal of the application applies (assuming such arrangements can be justified by one or more ORRPIs). Councils who do not put in place such arrangements may also wish to consider whether to specify administratively the conditions that will automatically attach to a temporary street trading licence which is deemed to have been granted under regulation 19(5) of the PSR (as a result of the application not having been processed in time).

**Question 26:** Please indicate whether you would agree or disagree with the following proposals in respect of applications for temporary street trading licences:

- (i) to disapply regulation 19(5) of the Provision of Services Regulations 2009 where a mandatory ground for refusal of the application exists;
- (ii) to leave it to councils to decide whether to put arrangements in place to disapply regulation 19(5) in other circumstances; or
- (iii) to leave it to councils to specify the conditions which will attach to a licence which is deemed to have been granted under regulation 19(5).

Please provide any comments you may have.

### **Regulations 19(4) and 19(5) – Temporary licences - frequency and duration**

1.128 These regulations will remove the requirements in sections 14(8)(b) and 14(9) that councils shall not grant a temporary licence for more than 7 days or on more than 5 occasions during any year to a particular applicant. (See regulation 19(4) and 19(5) at Annex A, Part 4).

### **Why this amendment is being introduced**

- 1.129 Section 14 of the Street Trading Act confers power on councils to grant temporary street trading licences. A council must set the criteria it considers appropriate, for example the types of occasions, events, the size/number of stalls etc. These temporary licences may be granted in relation to undesignated areas or for goods and articles normally prohibited in a designated street.
- 1.130 Article 11(1) of the Directive (Regulation 16 of the PSR), which applies to established traders, states that authorisations should not be granted for a limited period except in certain circumstances. We are satisfied that these circumstances do apply in relation to temporary licences.
- 1.131 In relation to temporary traders, Article 16 of the Directive (Regulation 24 of the PSR) stipulates a stringent test to be met before a time limit can be imposed on an authorisation. We have some concerns that placing restrictions on the number and frequency of occasions that a temporary licence can be granted is proportionate.

**Question 27:** Do you agree or disagree with the proposal to remove the limitations placed on the frequency and duration of temporary licences? Please provide any comments you may have.

#### **Additional question:**

#### **Licensing of street traders**

- 1.132 Under section 1 of the Street Trading Act no person is permitted to engage in street trading in a council area unless they have been granted a street trading licence or a temporary licence by the relevant council.
- 1.133 The Directive allows greater flexibility in relation to authorisation schemes applying to established traders (traders established in the United Kingdom or seeking to establish in the United Kingdom) (see Article 9) than in relation to authorisation schemes applying to temporary traders (traders exercising the right to provide cross-border services in a Member State other than the one in which they are established) (see Article 16).
- 1.134 The possible grounds for justifying the need for a licensing regime are much more limited in relation to temporary traders than in relation to established traders. (Councils are already subject to Regulations 14 and 24 of the PSR which implement Article 9 and 16 of the Directive respectively, so they can only designate a street in relation to established traders if the Article 9(1) requirements are met, and in relation to temporary traders if the Article 16 requirements are met).
- 1.135 Therefore, it may be possible in a particular case to be able to justify a licensing regime for established traders but not in relation to temporary traders.
- 1.136 While no draft provision has been included at this time, we would welcome councils' views regarding the need for the introduction of an amendment which would provide a power to exempt temporary traders from requiring a street trading licence. Specifically, as a council, can you envisage that there might ever be circumstances in which a licensing

regime may be justified in relation to established traders but may not be justified in relation to temporary traders? We are particularly interested in details of any circumstances which you may identify.

**Question 28: This question need only be completed by councils**

**As a council, do you envisage circumstances where a licensing regime may be justified in relation to established traders but may not be justified in relation to temporary traders?**

**Question 29: If you responded “Yes” to the above question, please provide details of any circumstances identified.**

## **Consultation Questions: Northern Ireland**

### **Amendments to Street Trading Act (Northern Ireland) 2001**

**(Questions 1 – 3 in the survey relate to respondents details)**

#### **Licensing of street traders**

#### **Repeal of the Pedlars Acts:**

**Question 4:** Do you agree with the repeal of the Pedlars Acts 1871 and 1881 in relation to Northern Ireland? Please provide any comments you may have.

**Question 5:** If you are a pedlar: Do you foresee any potential impacts of the repeal of the Pedlars Acts, both in terms of cost, time and/or any other factors? Please provide any comments you may have.

**Question 6:** Do you consider that the repeal of the Pedlars Acts 1871 and 1881 would have an impact on any other organisation, individual or group? Please provide any comments you may have.

#### **Activities which are not street trading – Exemption from Pedlars from the street trading licensing regime – new definition of Pedlar**

**Question 7:** Please indicate whether you would agree or disagree with the proposed new definition of a pedlar for the purposes of the pedlar exemption from the street trading regime in Northern Ireland. Please fully explain your reasons for agreeing or disagreeing with any element of the proposed definition.

#### **Licensing of street traders: Applications for the grant, renewal or variation of street trading licences – providing date of birth**

**Question 8:** The proposed amendment to the Act would remove the requirement for an applicant for a street trading licence to provide their date of birth. Please

indicate whether you would agree or disagree with this proposal. Please provide any comments you may have.

**Licensing of street traders: Applications – requirement to include photographs with an application**

**Question 9:** The proposed amendment to the Act would require an applicant to provide only one photo where an application for a street trading licence is made electronically. Please indicate whether you would agree or disagree with this proposal. Please provide any comments you may have.

**Licensing of street traders: Applications – a new provision to ensure that applications for street trading licences are not deemed to have been granted**

**Question 10:** Please indicate whether you would agree or disagree with the following proposals:

- (i) to disapply regulation 19(5) of the Provision of Services Regulations 2009 where a mandatory ground for refusal of the application exists;
- (ii) to leave it to councils to decide whether to put arrangements in place to disapply regulation 19(5) in other circumstances; or
- (iii) to leave it to councils specify the conditions which will attach to a licence which is deemed to have been granted under regulation 19(5).

Please provide any comments you may have.

**Grant etc. of street trading licence – duration of licence**

**Question 11:** Please indicate whether you would agree or disagree with the proposal to give councils the flexibility to grant licences for longer than 3 years or indefinitely? Please provide any comments you may have.

**The following questions need only be completed by councils**

**Question 12:** Please indicate whether you think the proposal to lengthen the duration of licences would have a positive impact, no effect or a negative impact on the ability of new street traders to obtain licences to trade. Please provide any comments you may have.

**Question 13:** As a council are you likely to issue street trading licences for longer periods (i.e. for longer than 3 years or indefinitely)?

**Question 14:** If you responded “likely” please indicate the time frame you would choose and give reasons for your views.

**Mandatory grounds for refusing an application - an applicant must be an individual**



**Question 15:** Please indicate whether you would agree or disagree with the proposal to remove the requirement that an applicant for a street trading licence is an individual. Please provide any comments you may have.

**Discretionary grounds for refusing an application – revocation of section 9(1)(a)(iv) – sufficient traders**

**Question 16:** In your view, are there any circumstances in which the discretionary ground for refusing an application in section 9(1)(a)(iv) can be used compatibly with the Directive? If you responded “Yes” to the above question, please provide any comments you may have.

**Discretionary grounds for refusing an application – insufficient use of licence – section 9(1)(d)**

**Question 17:** In your view, are there any circumstances in which the discretionary ground for refusing an application under section 9 (1)(d) can be used compatibly with the Directive in relation to temporary traders? Please provide any comments you may have.

**Question 18:** In your view, would it be preferable to pursue the proposed approach of expressly preventing section 9(1)(d) from being used in relation to temporary traders or to repeal the grounds completely? Please provide any comments you may have.

**The following questions need only be completed by councils**

**Question 19:** As a council, are you likely to continue to use the discretionary ground in section 9(1)(d) in relation to established traders? Please provide any comments you may have.

**Question 20:** Do you foresee any difficulties with the proposal to limit the circumstances in which this discretionary ground can be used in relation to established traders? Please provide any comments you may have.

**Revocation, etc. of street trading licences- insufficient use of licence - section 10(1)(c)**

**Question 21:** In your view, are there any circumstances in which the discretionary ground for revoking an application under section 10(1)(c) can be used compatibly with the Directive in relation to temporary traders? Please provide any comments you may have.

**Question 22:** In your view, would it be preferable to pursue the proposed approach of expressly preventing section 10(1)(c) from being used in relation to temporary traders or to repeal the grounds completely? Please provide any comments you may have.

**The following questions need only be completed by councils**

**Question 23:** As a council, are you likely to continue to use the discretionary ground in section 10(1)(c) in relation to established traders? Please provide any comments you may have.

**Question 24:** Do you foresee any difficulties with the proposal to limit the circumstances in which this discretionary ground can be used in relation to established traders? Please provide any comments you may have.

### **Temporary licences – requirement to include photographs**

**Question 25:** Do you agree or disagree with the proposal that only one photo needs to be submitted with an application for a temporary licence which is made electronically? Please provide any comments you may have.

### **Temporary licences - a new provision to ensure that applications for temporary street trading licences not processed in time are not deemed to have been granted in certain cases**

**Question 26:** Please indicate whether you would agree or disagree with the following proposals in respect of applications for temporary street trading licences:

- (i) to disapply regulation 19(5) of the Provision of Services Regulations 2009 where a mandatory ground for refusal of the application exists;
- (ii) to leave it to councils to decide whether to put arrangements in place to disapply regulation 19(5) in other circumstances; or
- (iii) to leave it to councils to specify the conditions which will attach to a licence which is deemed to have been granted under regulation 19(5).

Please provide any comments you may have.

### **Temporary licences - frequency and duration**

**Question 27:** Do you agree or disagree with the proposal to remove the limitations placed on the frequency and duration of temporary licences? Please provide any comments you may have.

### **Licensing of street traders**

**Question 28:** This question need only be completed by councils.  
As a council, do you envisage circumstances where a licensing regime may be justified in relation to established traders but may not be justified in relation to temporary traders?

**Question 29:** If you responded “Yes” to the above question, please provide details of any circumstances identified.

## Chapter 5 - Proposals to repeal section 39(3)d of the Civic Scotland Act 1982 to take account of the repeal of the Pedlars Act (see Annex A)

1.137 The repeal of the Pedlars Acts will have effect in Scotland. As a result of repeal, consequential amendments are necessary to provisions of other Scottish legislation (i.e. those which refer to the Pedlars Acts or to pedlars' certificates), to ensure that the legislation remains workable. Details of these consequential amendments are shown at Annex A.

1.138 Pedlar activities may therefore be regulated under the street trading regime operated under the Civic Government (Scotland) Act 1982. It would be for local licensing authorities to determine the extent to which pedlars are regulated in a particular area. It will also be for licensing authorities to ensure compliance with the Services Directive by ensuring that any decision to licence pedlary is supported by evidence, proportionate and justified by the public interest.'

### Consultation questions: Scotland

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

**Question 2:** If you are a Police force:

(i) what is the approximate annual cost of administering the pedlar certification scheme?

(ii) what impacts would repeal of the Acts have in terms of cost, time and/ or other factors?

**Question 3:** If you are a pedlar, what do you consider are the impacts of repeal, both in terms of cost, time and/ or any other factors?

**Question 4:** 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.

## ANNEX A – Draft Regulations

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STATUTORY INSTRUMENTS  
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[ ] No. [ ]

**STREET TRADING**

**PEDLARS**

**The Street Trading and Pedlary Regulations 2012**

*Made* -----\*\*\*

*Laid before Parliament* -----\*\*\*

*Coming into force* -----\*\*\*

The Secretary of State is a Minister designated<sup>3</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>4</sup> in relation to services in the internal market and [ ].

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<sup>3</sup> S.I.

<sup>4</sup> 1972 c.68

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of that Act.

## **Part 1**

### **General**

#### **Citation and commencement**

1.-(1) These Regulations may be cited as the Street Trading and Pedlary Regulations 2012.

(2) These Regulations come into force on [ ].

## **Part 2**

### **Repeal of the Pedlars Acts 1871 and 1881**

#### **Repeal of the Pedlars Acts 1871 and 1881**

2. -(1) The Pedlars Act 1871<sup>5</sup> is repealed.

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<sup>5</sup> 1871 c.96

(2) The Pedlars Act 1881<sup>6</sup> is repealed.

### **Part 3**

#### **Amendments to Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982**

#### **Amendments to Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982**

3. Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982<sup>7</sup> (street trading) is amended as specified in regulations 4 to 11.

#### **Exemption for pedlars from street trading regime**

4. -(1) Paragraph 1 is amended as follows.

(2) For sub-paragraph (2)(a) substitute-

“(a) trading as a pedlar;”.

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<sup>6</sup> 1881 c.45

<sup>7</sup> 1982 c.30

(3) After sub-paragraph (2) insert-

“(2A) The reference to trading as a pedlar in sub-paragraph (2)(a) above is a reference to-

(a) trading on foot, by means of visits from house to house; or

(b) trading on foot, solely or partly by means other than visits from house to house, and in accordance with sub-paragraphs (2B) to (2E).

(2B) Each article which the person (“the trader”) is selling or exposing or offering for sale, and each article used by him while trading for a purpose connected with the trading, must be carried-

(a) on the trader's person, without any means of support; or

(b) in or on a receptacle –

(i) which is pushed or pulled by the trader; and

(ii) which, together with any articles in or on the receptacle, does not exceed one metre in length or width or two metres in height.

(2C) The trader must leave any location that he is occupying with a view to trading no later than 10 minutes after he arrives there; but the trader may nonetheless occupy the location for longer than 10 minutes if sub-paragraph (2E) applies.

(2D) The trader must not occupy a location with a view to trading if, with a view to trading, he has at any point during the previous 3 hours occupied-

(a) that location; or

(b) a location within 50 metres of that location;

but the trader may nonetheless occupy the location in question if sub-paragraph (2E) applies.

(2E) This sub-paragraph applies if-

(a) the trader is occupying the location in consequence of one or more customers having approached him; and

(b) he leaves the location as soon as he has no more customers to serve.

(2F) For the purpose of sub-paragraph (2D), distance is to be measured in a straight line except to the extent that-

(a) the ground is not level; or

(b) passage along the line is obstructed by buildings, fixed structures or private property.

(2G) The articles which may be sold or exposed or offered for sale when trading as a pedlar include living things.”.

## **Designation of streets**



5. -(1) In paragraph 2, after sub-paragraph (1) insert-

“(1A) A resolution designating a street as a licence street or as a consent street may provide that the designation is to take effect in relation to-

(a) all persons; or

(b) all persons other than a person who is the provider of a service within the meaning of Part 4 of the Provision of Services Regulations 2009 (providers of services provided in UK from another EEA state).”.

### **Street trading licences: applications**

6. - (1) Paragraph 3 is amended as follows.

(2) For sub-paragraph (3) substitute-

“(3) The applicant shall comply with any requirement by the council to submit with his application-

(a) one photograph of himself, in the case of an application made by electronic means;

(b) two photographs of himself, in any other case.”.

(3) For sub-paragraph (4)(a) substitute-

"(a) if, were the licence to be granted and the applicant to engage in the trading permitted by the licence, there would be a contravention of Part 2 of the Children and Young Persons Act 1933 or of a byelaw made under that Part;"

(4) In sub-paragraph (6), for "Subject to sub-paragraph (8) below" substitute "Subject to sub-paragraphs (6A) to (6C) below".

(5) For sub-paragraph (6)(b) substitute-

"(b) that the street is otherwise unsuitable for the trading in which the applicant desires to engage;"

(6) After sub-paragraph (6) insert-

"(6A) An application ("the application under consideration") shall not be refused on the ground mentioned in sub-paragraph (6)(c) above unless-

(a) another person has applied for a street trading licence (or the renewal of such a licence) to trade in the street specified in the application under consideration on a greater number of days in every week than the number of days specified in the application under consideration; and

(b) if the application under consideration were to be refused, the council would grant to the other person a street trading licence (or renew his street trading licence) to trade in that street on that greater number of days.

(6B) An application ("the application under consideration") shall not be refused on the ground mentioned in sub-paragraph (6)(g) above unless-

(a) another person has applied for a street trading licence (or the renewal of such a licence) to trade in the street specified in the application under consideration on the days and between the times specified in the application under consideration; and

(b) if the application under consideration were to be refused, the council would grant to the other person a street trading licence (or renew his street trading licence) to trade in that street on those days and between those times.

(6C) An application shall not be refused on either of the grounds mentioned in sub-paragraph (6)(c) or (g) above if the applicant is the provider of a service within the meaning of Part 4 of the Provision of Services Regulations 2009 (providers of services provided in UK from another EEA state).”.

(7) Omit sub-paragraph (8).

### **Street trading licences: duration**

7. In paragraph 4, for sub-paragraph (6) substitute-

“(6) A street trading licence shall, unless revoked or surrendered, remain valid for such period as is specified in the licence or, if no period is specified in the licence, indefinitely.”.

### **Street trading licences: revocation**

8 – (1) Paragraph 5 is amended is as follows.

(2) At the beginning of sub-paragraph (1) insert “Subject to sub-paragraphs (1A) and (1B) below,”.

(3) After sub-paragraph (1) insert-

“(1A) A licence (“the licence under consideration”) shall not be revoked on the ground mentioned in sub-paragraph (1)(d) above unless-

(a) another person has applied for a street trading licence (or the renewal of such a licence) to trade in the street specified in the licence under consideration on the days and between the times specified in the licence under consideration; and

(b) if the licence under consideration were to be revoked, the council would grant to the other person a street trading licence (or renew his street trading licence) to trade in that street on those days and between those times.

(1B) A licence shall not be revoked on the ground mentioned in sub-paragraph (1)(d) above if the licence-holder is the provider of a service within the meaning of Part 4 of the Provision of Services Regulations 2009 (providers of services provided in UK from another EEA state).”

### **Street trading licences: disapplication of regulation 19(5) of the Provision of Services Regulations 2009 in certain cases**

9. In paragraph 6, after sub-paragraph (1) insert-

“(1A) Regulation 19(5) of the Provision of Services Regulations 2009<sup>8</sup> (deemed grant of authorisation where application not processed in time) does not apply in the case of an application for the grant or renewal of a street trading licence which the council would have refused under paragraph 3(4) above, had they processed the application within the period set or extended in accordance with regulation 19 of those Regulations.”.

### **Street trading consents**

10. -(1) Paragraph 7 is amended as follows.

(2) In sub-paragraph (3), for paragraph (a) substitute-

"(a) if, were the consent to be granted and the applicant to engage in the trading permitted by the consent, there would be a contravention of Part 2 of the Children and Young Persons Act 1933 or of a byelaw made under that Part;".

(3) After sub-paragraph (3) insert-

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<sup>8</sup> S.I. 2009/2999

“(3A) Regulation 19(5) of the Provision of Services Regulations 2009 (deemed grant of authorisation where application not processed in time) does not apply in the case of an application for a street trading consent or for the renewal of such a consent which the council would have refused under paragraph 7(3) above, had they processed the application within the period set or extended in accordance with regulation 19 of those Regulations.”.

(4) For sub-paragraph (7) substitute-

“(7) The holder of a street trading consent shall not trade in a consent street from a van or other vehicle or from a stall, barrow or cart unless the council include in the consent permission for him to do so.”.

(5) Omit sub-paragraph (8).

(6) In sub-paragraph (9)-

(a) omit the “and” preceding paragraph (b), and

(b) after that paragraph, insert- “;

(c) that the van or other vehicle or the barrow or cart must be stationary or that the stall must be portable.”.

(7) In sub-paragraph (10) for “any period not exceeding 12 months” substitute “a fixed period or indefinitely”.

## **Offences**

11. In paragraph 10(1) (conduct amounting to an offence), for paragraph (d) substitute-

“(d) being the holder of a street trading consent, contravenes the prohibition imposed by paragraph 7(7) above;”.

## Part 4

### Amendments to the Street Trading Act (Northern Ireland) 2001

#### Amendments to the Street Trading Act (Northern Ireland) 2001

12. The Street Trading Act (Northern Ireland) 2001<sup>(9)</sup> is amended as specified in regulations 13 to 19.

#### Activities which are not street trading

13.—(1) Section 2 is amended as follows.

(2) For subsection (1)(e) substitute—

“(e) trading as a pedlar.”.

(3) After subsection (1)(e) insert—

“(1A) The reference to trading as a pedlar in subsection (1)(e) is a reference to—

(a) trading on foot and by means of visits from house to house; or

(b) trading on foot, solely or partly by means other than visits from house to house, and in accordance with subsections (3A) to (3D)”.

(4) After subsection (3) insert—

“(3A) Each article which the person (“the trader”) is selling or exposing or offering for sale, and each article used by him while trading for a purpose connected with the trading, must be carried—

(a) on the trader’s person, without any means of support; or

(b) in or on a receptacle—

(i) which is pushed or pulled by the trader; and

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<sup>(9)</sup> 2001 c.8 (NI)

- (ii) which, together with any articles in or on the receptacle, does not exceed one metre in length or width or two metres in height.

(3B) The trader must leave any location that he is occupying with a view to trading no later than 10 minutes after he arrives there; but the trader may nonetheless occupy the location for longer than 10 minutes if subsection (3D) applies.

(3C) The trader must not occupy a location with a view to trading if, with a view to trading, he has at any point during the previous 3 hours occupied—

- (a) that location; or
- (b) a location within 50 metres of that location;

but the trader may nonetheless occupy the location in question if subsection (3D) applies.

(3D) This subsection applies if—

- (a) the trader is occupying the location in consequence of one or more customers having approached him; and
- (b) he leaves the location as soon as he has no more customers to serve.

(3E) For the purpose of subsection (3C), distance is to be measured in a straight line except to the extent that—

- (a) the ground is not level; or
- (b) passage along the line is obstructed by buildings, fixed structures or private property.

(3F) The articles which may be sold or exposed or offered for sale when trading as a pedlar include living things.”.

### **Applications for the grant, renewal or variation of street trading licences**

14. —(1) Section 5 is amended as follows.

(2) For subsection (4)(a) substitute—

“(a) the full name and address of the applicant;”.

(3) For subsection (5) substitute—

“(5) An application for the grant or renewal of a street trading licence shall, if the council so requires, be accompanied by—

- (a) 1 photograph of the applicant, which is acceptable to the council in the case of an application made by electronic means;
- (b) 2 photographs of the applicant which are acceptable to the council in any other case.”.

(4) After subsection (8) insert—

“(9) Regulation 19(5) of the Provision of Services Regulations 2009 (deemed grant of authorisation where application not processed in time) does not apply in the case of an application for the grant, renewal or variation of a street trading licence which the council would have refused under section 8, had they processed the application within the period set or extended in accordance with regulation 19 of those Regulations.”.

### **Grant etc. of street trading licences**

15. In section 6, for subsection (4) substitute—

“(4) A street trading licence shall, unless revoked or surrendered, remain valid for such period as is specified in the licence or, if no period is specified in the licence, indefinitely.”.

### **Mandatory grounds for refusing an application**

16. In section 8, subsection (1)(a) is omitted.

### **Discretionary grounds for refusing an application**

17.—(1) Section 9 is amended as follows.

(2) At the beginning of subsection (1) for “A” substitute “Subject to subsections (1A) and (1B), a”.

(3) In subsection (1)(a) sub-paragraph (iv) is omitted.

(4) After subsection (1) insert—

“(1A) An application (“the application under consideration”) shall not be refused on the ground mentioned in subsection (1)(d) unless-

- (a) another person has applied for a street trading licence (or the renewal of such a licence) to trade in the street specified in the application under consideration on the days and between the times specified in the application under consideration; and
- (b) if the application under consideration were to be refused, the council would grant to the other person a street trading licence (or renew his street trading licence) to trade in that street on those days and between those times.

(1B) An application shall not be refused on the ground mentioned in subsection (1)(d) if the applicant is the provider of a service within the meaning of Part 4 of the Provision of Services Regulations 2009 (providers of services provided in the UK from another EEA state).”.

### **Revocation, etc of street trading licences**

18. —(1) Section 10 is amended as follows.

(2) At the beginning of subsection (1) for “A” substitute “Subject to subsections (1A) and (1B), a”.

(3) After subsection (1) insert—

“(1A) A licence (“the licence under consideration”) shall not be revoked on the ground mentioned in subsection (1)(c) unless-



- (a) another person has applied for a street trading licence (or renewal of such a licence) to trade in the street specified in the licence under consideration on the days and between the times specified in the licence under consideration; and
- (b) if the licence under consideration were to be revoked, the council would grant to the other person a street trading licence (or renew his street trading licence) to trade in that street on those days and between those times.

(1B) A licence shall not be revoked on the ground mentioned in subsection (1)(c) if the licence-holder is the provider of a service within the meaning of Part 4 of the Provision of Services Regulations 2009 (providers of services provided in the UK from another EEA state).”.

### **Temporary licences**

19. —(1) Section 14 is amended as follows.

(2) In subsection (2), for paragraph (c) substitute—

“(c) shall, if the council so requires, be accompanied by-

- (i) 1 photograph of the applicant which is acceptable to the council in the case of an application made by electronic means;
- (ii) 2 photographs of the applicant which are acceptable to the council in any other case.”.

(3) After subsection (4) insert-

“(4A) Regulation 19(5) of the Provision of Services Regulations 2009 (deemed grant of authorisation where application not processed in time) does not apply in the case of an application for the grant of a temporary licence which the council would have refused under subsection (1) or (2) of section 8 (as applied by subsection (4) above), had they processed the application within the period set or extended in accordance with regulation 19 of those Regulations.”.

(4) In subsection (8)(b) “, not exceeding 7 days,” is omitted.

(5) Subsection (9) is omitted.

## **Part 5**

### **Consequential Amendments and Revocation**

#### **Consequential amendments and revocation**

20. The Schedule (which, as a consequence of the repeals and amendments made by Parts 2 and 3 of these Regulations, amends and revokes other legislation) shall have effect.

## **SCHEDULE**

### **CONSEQUENTIAL AMENDMENTS AND REVOCATION**

#### **Regulation 20**

##### **Part 1**

##### **Amendments to Primary Legislation**

##### **Markets and Fairs Clauses Act 1847**

1.-(1) In section 13 of the Markets and Fairs Clauses Act 1847<sup>10</sup> (which becomes subsection (1)), for "licensed hawker" substitute "pedlar".

(2) After subsection (1) of that section insert-

"(2) In subsection (1), "pedlar" means a person trading as a pedlar within the meaning of paragraph 1(2)(a) of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982."

##### **Local Government Act 1966**

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<sup>10</sup> 1847 c.14

2. In Part 2 of Schedule 3 to the Local Government Act 1966<sup>11</sup> (variation of fees for licences, registration etc), omit paragraph 8 (which relates to section 5 of the Pedlars Act 1871).

### **Local Government (Scotland) Act 1966**

3. In Part 2 of Schedule 4 to the Local Government (Scotland) Act 1966<sup>12</sup> (variation of fees for licences, registration etc), omit paragraph 4A (which relates to section 5(3) of the Pedlars Act 1871).

### **Civic Government (Scotland) Act 1982**

4. In section 39 of the Civic Government (Scotland) Act 1982<sup>13</sup> (street traders' licences), omit subsection (3)(d).

### **Food Act 1984**

5. -(1) Section 56 of the Food Act 1984<sup>14</sup> is amended as follows.

(2) In section 56(1) (prohibited sales in market hours), omit "holding a certificate under the Pedlars Act 1871".

(3) After section 56(2) insert-

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<sup>11</sup> 1966 c.42

<sup>12</sup> 1966 c.51

<sup>13</sup> 1982 c.45

<sup>14</sup> 1984 c.30

“(3) In subsection (1) “pedlar” means a person trading as a pedlar within the meaning of paragraph 1(2)(a) of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982.”.

### **Roads (Scotland) Act 1984**

6. In the Roads (Scotland) Act 1984<sup>15</sup>-

(a) in section 97 (trading), omit subsection (4)(f); and

(b) in section 129 (miscellaneous summary offences), omit subsection (9)(d).

### **Criminal Procedure (Scotland) Act 1995**

7. In Schedule 5 to the Criminal Procedure (Scotland) Act 1995<sup>16</sup> (forms of complaint and charges), omit-

“You did act as a pedlar without having obtained a certificate, contrary to section 4 of the Pedlars’ Act 1871.”

### **Police Act 1996**

8. In the Police Act 1996<sup>17</sup> -

(a) in Schedule 7, omit paragraphs 2 to 6 and the preceding heading, and

(b) in Schedule 8, omit paragraph 5 and the preceding heading.

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<sup>15</sup> 1984 c.54

<sup>16</sup> 1995 c.46

<sup>17</sup> 1996 c.16

## **Regulatory Enforcement and Sanctions Act 2008**

9. In the Regulatory Enforcement and Sanctions Act 2008<sup>18</sup>, in Schedules 3 and 6, omit the entry for the Pedlars Act 1871.

### **Part 2**

#### **Amendment to, and Revocation of, Secondary Legislation**

## **Legislative and Regulatory Reform (Regulatory Functions) Order 2007**

10. In the Legislative and Regulatory Reform (Regulatory Functions) Order 2002<sup>19</sup>, in Part 3 of the Schedule, under the heading “Licensing” omit the entry “Pedlars Act 1871”.

## **Pedlars' Certificates (Variation of Fee) (Scotland) Order 1985**

11. The Pedlars' Certificates (Variation of Fee) (Scotland) Order 1985<sup>20</sup> is revoked.

**[Date]**

**[Signature]**

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<sup>18</sup> 2008 c.13

<sup>19</sup> S.I. 2007/3544

<sup>20</sup> S.I. 1985/2054

## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These Regulations are made in order to ensure compliance with Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market (OJ No. L376, 27.12.2006, p.36) (“the Directive”). The Directive was implemented in the UK by the Provision of Services Regulations 2009 (S.I. 2009/2999). In particular, regulation 45 of those Regulations made specific amendments to the Pedlars Act 1871 to remove certain service providers from the scope of that Act. Since those Regulations were made the UK Government has taken the revised view that the retail sale of goods is generally a service activity within the scope of the Directive, and therefore that legislation containing authorisation schemes for pedlars or street traders needs to satisfy the requirements of the Directive.

Part 2 of the Regulations (regulation 2) repeals the Pedlars Act 1871 and the Pedlars Act 1881, which require pedlars to be certified by the police.

Part 3 of the Regulations (regulations 3 to 11) amends Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 (“Schedule 4 to the 1982 Act”), which sets out a regime for regulating street trading that can be adopted by district councils in England and Wales.

Regulation 4 amends paragraph 1 of Schedule 4 to the 1982 Act to replace the current exemption for certified pedlars from the street trading regime contained in that Schedule with a new exemption for persons trading in accordance with certain requirements. Regulation 5 amends paragraph 2 of Schedule 4 to the 1982 Act to confer a power on councils to limit the designation of a street as a licence street or as a consent street to traders who are not providing cross-border services. Regulation 6 amends paragraph 3 of Schedule 4 to the 1982 Act in various respects. In particular, it replaces, or restricts the use of, certain of the mandatory and discretionary grounds for refusing a street trading licence. Regulation 8 imposes equivalent restrictions on the use of one of the grounds for revoking such a licence. Regulation 7 amends paragraph 4 of Schedule 4 to the 1982 Act to confer power on councils to grant street trading licences for such period as they consider appropriate or indefinitely. Regulation 9 disapplies regulation 19(5) of the Provision of Services Regulations 2009 (which would otherwise deem a street trading licence to have been granted if the application for the licence is not processed in time) where a mandatory ground for refusal of a street trading licence applies. Regulation 10 makes various amendments to paragraph 10 of Schedule 4 to the 1982 Act which deals with the street trading consent regime. Most of these are equivalent to amendments made in relation to the street trading licence regime. Regulation 11 makes consequential amendments to paragraph 10 of Schedule 4 to the 1982 Act which deals with offences under Schedule 4.

Part 4 of the Regulations (regulations 12 to 19) amends the Street Trading Act (Northern Ireland) 2001 (“the 2001 Act”) which makes provision for the regulation by district councils of street trading in Northern Ireland.

Regulation 13 amends section 2 of the 2001 Act to replace the current exemption for certified pedlars from the street trading regime contained in the Act with a new exemption for persons trading in accordance with certain requirements. Regulation 14 amends section 5 of the 2001 Act in various respects. In particular, it disapplies regulation 19(5) of the Provision of Services

Regulations 2009 (which would otherwise deem a street trading licence to have been granted if the application for the licence is not processed in time) where a mandatory ground for refusal of a street trading licence applies. Regulation 15 amends section 6 of the 2001 Act to confer power on councils to grant street trading licences for such period as they consider appropriate or indefinitely. Regulation 16 amends section 8 of the 2001 Act to remove one of the mandatory grounds for refusing an application for a street trading licence. Regulation 17 amends section 9 of the 2001 Act to remove one of the discretionary grounds for refusing such an application, and to restrict the use of another of those discretionary grounds. Regulation 18 amends section 10 of the 2001 Act to impose equivalent restrictions on the use of one of the grounds for revoking a street trading licence. Regulation 19 amends section 14 of the 2001 Act (which deals with temporary street trading licences) in various respects.

Part 5 of, and the Schedule to, the Regulations make amendments to and revoke other legislation. These changes are consequential on the repeals and amendments made by Parts 2 and 3 of the Regulations.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the BIS website ([www.bis.gov.uk](http://www.bis.gov.uk)). It is also annexed to the Explanatory Memorandum which is available alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk). Copies have also been placed in the Libraries of both Houses of Parliament.

## **ANNEX B - LOCAL ACTS REGULATING STREET TRADING THAT NEED TO BE SCREENED BY RELEVANT LOCAL AUTHORITIES AGAINST THE REQUIREMENTS OF THE DIRECTIVE:**

Barking Corporation Act 1933
Bermondsey Borough Council (Street Trading) Act 1926
Bournemouth Borough Council Act 2010
Bristol Corporation Act 1926
Cheshire County Council Act 1980
City of London (Various Powers) Act 1987
City of Newcastle upon Tyne Act 2000
City of Westminster Act 1999
County of Avon Act 1982
County of Kent Act 1981
County of Lancashire Act 1984
County of Merseyside Act 1980
Croydon Corporation Act 1927
Croydon Corporation Act 1960
Dagenham Urban District Council 1931



Derbyshire Act 1981
Essex Act 1987
Exeter Corporation Act 1971
Greater Manchester Act 1981
Hampshire Act 1983
Hendon Urban District Council Act 1929
Humberside Act 1982
Leicester City Council Act 2006
Liverpool City Council Act 2006
London County Council (General Powers) Act 1947
London Local Authorities Act 1990
Maidstone Borough Council Act 2006
Manchester City Council Act 2010
Medway Council Act 2004
Middlesex County Council Act 1930
Middlesex County Council Act 1944
Middlesex County Council Act 1956
Nottingham City Council Act 1976

Nottinghamshire County Council Act 1985
South Yorkshire Act 1980
Walthamstow Corporation Act 1932
West Ham Corporation Act 1925
West Ham Corporation Act 1931
West Sussex County Council Act 1972
Wimbledon Corporation Act 1933

## **ANNEX C - PROVISIONS OF LOCAL ACTS THAT MAY REQUIRE CONSEQUENTIAL AMENDMENT AS A RESULT OF THE REPEAL OF THE PEDLARS ACTS**

- Barking Corporation Act 1933, s.173 and s.202
- Bermondsey Borough Council (Street Trading) Act 1926, s.12
- Bournemouth Borough Council Act 2010, s.5
- Bristol Corporation Act 1926, s.110(5)
- City of Newcastle upon Tyne Act 2000, s.4
- City of Westminster Act 1999, s.3.
- County of Avon Act 1982, s.21
- County of Kent Act 1981, s.45
- County of Merseyside Act 1980, s.47
- Croydon Corporation Act 1927, s.108
- Croydon Corporation Act 1960, s.149
- Dagenham Urban District Council 1931, s.123
- Derbyshire Act 1981, s.51
- Exeter Corporation Act 1971, s.7(11)
- Greater Manchester Act 1981, s.93 and s.135
- Hendon Urban District Council Act 1929, s.150
- Humberside Act 1982, s.29
- Leicester City Council Act 2006, s.4
- Liverpool City Council Act 2006, s.4
- London County Council (General Powers) Act 1947, s.30(a)
- London Local Authorities Act 1990, s.21
- Maidstone Borough Council Act 2006, s.4
- Manchester City Council Act 2010, s.5
- Medway Council Act 2004, s.4
- Middlesex County Council Act 1930, s.21
- Middlesex County Council Act 1944, s.330
- Middlesex County Council Act 1956, s.67
- Nottingham City Council Act 1976, s.12
- South Yorkshire Act 1980, s.78
- Walthamstow Corporation Act 1932, s.13
- West Ham Corporation Act 1925, s.61
- West Ham Corporation Act 1931, s.35
- Wimbledon Corporation Act 1933, s.102

## **ANNEX D - The Consultation Code of Practice Criteria**

Formal consultation should take place at a stage when there is scope to influence policy outcome.

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Consultation exercise should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

## ANNEX E – List of Organisations/Individuals consulted in relation to England and Wales

<p><b>Pedlars</b></p> <p>Andrew Carter          Brian &amp; Jack Gibbon, and Mike Parry          Frankie Fernando          Gary Armstrong and Lena Holt          Ian Kruger          Mathew Hicks          Meriel Campbell-Lloyd          Nick McGerr          Paul Holt          Pedlars.info          Peter Aston          Robert Campbell-Lloyd          Tony Furnivalis</p> <p><b>Local Authorities</b></p> <p>Bath and N.E Somerset Council          Bedford Borough Council          Belfast City Council          Bracknell Council          Brighton &amp; Hove Council          Camden Council          Canterbury Council          Cardiff City Council          Chichester District Council          City of York Council          Cornwall Council          Crawley Borough Council          Dartford Borough Council          Doncaster Metropolitan Borough          Enfield Council          Glasgow City Council          Gloucestershire Licensing Officer Group (GLOG)          Herefordshire Council          Knowsley Borough Council          Leeds City Council          Liverpool City Council          Maidstone Borough Council          Manchester City Council          Medway Council          Mid Lothian Council          Milton Keynes Council</p>	<p>Oxford City Council          Plymouth City Council          Reading Borough Council          Royal Borough of Windsor &amp; Maidenhead          Sheffield Council          South Yorkshire Trading Standards / Barnsley Metropolitan Borough          Southend Council Trading Standards          St. Albans Council          St. Helens Council          Stockton-on-Tees Council          Stoke-on-Trent Council          Swanage Town Council          Swansea Council          Swindon Borough Council          Tewkesbury Council          Torbay Council          Trafford Council          Westminster Council          Weymouth &amp; Portland Borough Council          Wigan Council          Wolverhampton Council          Yeovil Council          York City Centre</p> <p><b>Others</b></p> <p>ACPO (Association of Chief Police Officers)          All Wales, Licencing Technical Panel          Avon &amp; Somerset Police Constabulary          C Dugdale          Crawley Town Centre          Dorset Police          Fareham Town Centre          Federation of Small Businesses          Immitto Ltd          LACORS now LGR          Lincoln Business Improvement Group          Magistrates Association          Manchester Utd FC          NABMA &amp; Retails Markets Alliance          Natalie Cookson          National Market Traders Federation          North Tyneside Town Centre</p>
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<p>N.E Lincolnshire Council North Norfolk District Council North Somerset Council Nottingham City Council Oldham Council</p>	<p>Paul Maunders Poole Town Centre Sharpe Pritchard Steven McGowan Sundance Fairtrade</p>
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## **ANNEX F – List of Councils/Departments consulted in relation to Northern Ireland**

Antrim Borough Council  
Ards Borough Council  
Armagh District Council  
Ballymena Borough Council  
Belfast City Council  
Carrickfergus Borough Council  
Ballymoney Borough Council  
Banbridge District Council  
Castlereagh Borough Council  
Coleraine Borough Council  
Cookstown District Council  
Craigavon Borough Council  
Derry City Council  
Down District Council  
Dungannon & South Tyrone Borough Council  
Fermanagh District Council  
Larne Borough Council  
Limavady Borough Council  
Lisburn City Council  
Magherafelt District Council  
Moyle District Council  
Newry & Mourne District Council  
Newtownabbey Borough Council  
North Down Borough Council  
Omagh District Council  
Strabane District Council

Criminal Justice Department PSNI  
Operations Department PSNI  
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