



Department  
for Business  
Innovation & Skills

**STREET TRADING AND PEDLARY  
LEGISLATION: COMPLIANCE WITH  
THE EU SERVICES DIRECTIVE**

Government response to the  
consultation to repeal the  
Pedlars Acts and make changes  
to street trading legislation in  
England and Wales

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# Analysis and Government Response

## Key decisions

- The Pedlars Acts will be retained and the certification process amended to make it compliant with the Services Directive
- The definition of pedlary will remain unchanged
- The proposed amendments to Schedule 4 of the Local Government Miscellaneous Provisions Act (LGMPA) to make its provisions compliant with the Services Directive will go ahead.

1. The UK Government, the Northern Ireland Executive and the Scottish Government issued a joint consultation on 23 November 2012<sup>1</sup> seeking views on draft regulations to:
  - repeal the Pedlars Acts 1871 and 1881 (which apply to the whole of the UK) because the certification process set out in the Acts does not comply with the requirements of the European Union Services Directive 2006/123/EC (the Services Directive); and
  - amend the Local Government (Miscellaneous Provisions) Act 1982 (LGMPA) in England and Wales and the Street Trading Act (Northern Ireland) 2001 to ensure compliance with the Services Directive.
2. The need to make these changes followed the consensus reached by EU Member States in 2010 that the retail sale of goods is generally a service activity which falls within the scope of the Services Directive. Previously, such activities were not considered to be in scope and this change in interpretation was described in the Government response to the 2009 consultation on reform of the street trading regime which was published in March 2011.<sup>2</sup>
3. This document is the Government response to the consultation about the repeal of the Pedlars Acts which apply to the whole of the UK. It also covers the proposals for the street trading regime in England and Wales. The consultation ran for 19 weeks and closed on 5 April 2013. The consultation period was extended twice to ensure that all interested stakeholder groups had sufficient opportunity to respond.
4. In total, 183 responses were received from local authorities, police forces, pedlars, micro-businesses (mainly market traders) and their associations, other organisations and

<sup>1</sup> <https://www.gov.uk/government/consultations/street-trading-and-pedlary-laws-a-joint-consultation-on-draft-regulations-to-repeal-the-pedlars-acts-uk-wide-and-make-changes-to-the-street-trading-legislation-in-england-wales-and-northern-ireland>

<sup>2</sup> [Ref to 2011 response – not currently available on gov.uk] paragraph 23

individuals. Not all respondents answered all questions, some of which were only addressed to particular stakeholders such as local authorities or the police. Further details are at Annex A.

5. The Northern Ireland Executive and the Scottish Government will publish their own responses on the consultation on their street trading regimes later this year.

## Proposal to repeal the Pedlars Acts

6. The consultation document set out the reasons why the pedlar certification process, which consists of the need to prove residency in the local area for at least a month, that the applicant is over 17 years of age and is of good character, is incompatible with the Services Directive. It proposed that the certification process should be abolished and the Acts repealed because the certification scheme is their main purpose. The consultation asked (Question 1) whether consultees agreed with this approach.
7. Pedlars were strongly opposed to the repeal of the Pedlars Acts which they saw as providing legitimacy for their profession which would otherwise be lost. They argued that the Pedlars Acts should be retained but amended to comply with the Services Directive.
8. Police forces valued the certification process as it provided the means for them to make a judgement on whether or not to issue a licence and to thereby allow a pedlar to trade. They were worried that if this certification requirement was lost, door to door selling by rogue traders would increase. This concern was also held by many of the individuals who responded.
9. Local authorities were similarly worried that removing the certification process would provide a free-for-all for undesirable trading in their town centres. Street trader businesses and their associations agreed and wanted changes to address what they saw as unfair competition against licensed street traders. Annex B contains further analysis of the responses to this proposal.
10. In Northern Ireland no substantive responses were received from pedlars. District councils and local government representative groups were strongly opposed to the proposal to repeal the Pedlars Acts as they felt to do so would undermine the street trading licensing regime in Northern Ireland which provides for the regulation of mobile and stationary street traders. The Police Service Northern Ireland thought that pedlars should be regulated as street traders.
11. There were only a few responses in Scotland, mostly from licensing authorities, who were generally in favour of steps to modernise the law in this area.

## Government response

12. In the light of these responses and having considered further the legal position regarding the compliance of the pedlar certification process with the Services Directive, the Government has decided not to repeal the Pedlars Acts but instead to amend the certification process to make it compliant. The requirement for residency in the local area will be removed as it discriminates against traders from other EU Member States. While the age limit does in some ways duplicate child protection legislation, that legislation does not cover all modes of pedlary and so we believe the age limit can be justified for reasons

of public policy. The current requirement for good character is not specific enough to be objective and is inconsistently applied across the country. We will therefore work with the police to develop a new good character check to be applied across the UK that addresses these failings using experience from other certification procedures.

13. The current definition of pedlary in the Pedlars Acts will remain unchanged.

## Proposals to amend Schedule 4 of the LGMPA

### Paragraph 1 – Exemption for pedlars

14. The consultation proposed to introduce a new, modern definition of pedlary into paragraph 1 of Schedule 4 of the LGMPA so that with the proposed repeal of the Pedlars Acts, genuine pedlars would continue to be exempt from the national street trading regime as they are now. The definition was developed as a compromise between the restrictive requirements of some local authority Acts and the current very loose definition in the UK-wide Pedlars Acts and was based on a requirement for a pedlar to carry their goods and not to remain trading in one place. Descriptions of the size of receptacle allowed to carry the goods and what “mobile” meant were proposed. The consultation asked (Question 2) whether respondents agreed with the proposed definition.
15. While recognising that the existing definition is out of date and accepting the principle of the proposed new one, most respondents disagreed with the descriptions of how it would apply, from two opposing points of view. Pedlars thought that the proposed descriptions would unduly hamper their ability to trade freely. Local authorities thought the proposed descriptions were too “generous” and would be unworkable in practice. The market trading associations, other organisations and individuals that commented were also opposed. Chapter 2 contains further analysis of the responses on this issue.
16. In the light of the general disagreement with the proposed definition and the polarisation of responses between pedlars and local authorities and other respondents, we believe it is unlikely that a mutually acceptable definition can be found and **the Government has therefore decided not to change the exemption in Schedule 4 for certified pedlars and to leave the current definition of pedlary in the Pedlars Acts unchanged.**

### Established and temporary traders

17. The Services Directive distinguishes between two categories of service provider – those that are exercising the freedom of establishment (an established trader) and those that are exercising the right to provide cross-border services in a Member State other than the one in which he or she is established (a temporary trader). Article 9 of the Services Directive sets out the requirements for an authorisation scheme for established traders and Article 16 sets out the requirements for temporary ones. 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. The following paragraphs refer to this important distinction between types of trader.

### Paragraph 2 – Power to designate streets as licence streets or consent streets

18. The consultation proposed to amend paragraph 2 of Schedule 4 so that as well as being able to designate streets for both established and temporary traders, local authorities

should also be able separately to designate licence or consent streets just for established traders. This was to enable local authorities to take advantage of the fewer limitations on the restrictions that can be justified under the Services Directive for established traders compared to temporary ones. The consultation asked (Question 3) if local authorities could envisage circumstances in which it would be useful to designate a street as a licence or consent street in relation to established traders but not in relation to temporary traders.

19. Of the 50 respondents to this question, 27 local authorities could not envisage such a situation and did not think such an extra power would be useful as it would be considered unfair and be confusing. This compared to the 19 that thought that it would be useful, for example for use in particular high profile outdoor sites.
20. **On balance and in the light of these responses, the Government does not consider there is a strong case for changing this designation power.**

### Paragraph 3 – Applications for street trading licences

#### Electronic applications

21. The Services Directive requires that all in-scope application processes should be capable of being completed by electronic means. The consultation proposed to clarify that this is the case with respect to applications for street trading licences by amending the requirement for two photographs in paragraph 3(3) of Schedule 4 to just one when the application is made by electronic means. It asked (Question 4) whether consultees agreed with this. The 49 local authority respondents to this question all agreed with this proposal as did 6 of the 7 police forces, the 4 market trader associations, and the two Business Improvement Districts that responded.
22. **The Government will therefore amend paragraph 3(3) of Schedule 4 so that only one photograph is required** when the application is made by electronic means.

#### Grounds for refusing a licence – minimum age

23. Paragraph 3(4)a requires a local authority to refuse to grant a licence to a child under the age of 17 years. There is, however, other legislation (the Children and Young Persons Act 1933) which provides more specific protection for children and so this requirement appears to be redundant. To comply with the Services Directive, restrictions applying to the granting of a licence should be proportionate and the consultation argued that it was not proportionate to keep the Schedule 4 grounds for refusal based on age in addition to the sufficient protection afforded by the 1933 Act. The consultation therefore proposed to replace the current requirement to refuse a licence to a child under 17 with a requirement to refuse to grant a licence if to do so would contravene the Children and Young Persons Act. The consultation asked (Question 5) for views on this and an estimate of the number of applications expected from people under 17.
24. Of the 28 local authorities who responded, 17 agreed with the rationale for removing these grounds for refusing a licence saying that the age limit was arbitrary and not useful. Some of the 10 who disagreed raised concerns that child protection legislation might not be sufficient in a street trading context and that the status of a contract between buyer and seller was unclear if the trader was under 17. Plymouth City Council was concerned about young people trading products with a minimum age requirement such as knives and Sheffield City Council thought that the existing child protection legislation was not

adequate for protecting children of non-compulsory school age in the context of street trading. The estimates of the likely number of applicants under 17 years of age ranged from none to ten per year.

25. The Government believes the specific restrictions in the Children and Young Persons Act on the engagement of children in street trading are sufficient protection. On the issue of contracts, the usual common law contractual principles apply to contracts between minors and adults in the context of street trading and pedlary. In terms of young people trading restricted goods such as knives, other legislation exists that places a restriction on the sale of certain items.
26. In the light of the majority supporting the proposal, **the Government will therefore replace the mandatory ground for refusing a licence for applicants under the age of 17 years with one that requires a local authority to refuse to grant a licence if, were the licence to be granted, there would be a contravention of the Children and Young Persons Act 1933.**

### **Other grounds for refusing a licence**

27. Under paragraph 3(6), local authorities have discretion to refuse an application for a street trading licence on one of seven grounds. The Government's analysis of compatibility with the Services Directive indicated that of these, one was incompatible and two needed modification. The others could be justified although we will clarify in paragraph 3(6)(d) that "for any reason" must comply with regulation 24(3) of the Provision of Services Regulations 2009.
28. The consultation asked (Question 6) whether it would be useful for the Government to issue guidance on the discretionary grounds that could be justified: 3(6)a – insufficient space; 3(6)d – the applicant's suitability; 3(6)e and f – failure to pay fees/charges. Of the 39 respondents who answered this question, 33 agreed that guidance would be useful. The 5 respondents who disagreed thought that the Act was sufficiently clear and that local authorities were used to interpreting it.
29. In the light of this, **the Government will issue guidance on the circumstances in which the discretionary grounds 3(6)a, 3(6)d, 3(6)e and 3(6)f can be used.**
30. The consultation set out the Government's view that one of these grounds: 3(6)b – that there are already enough shops or street traders in the street who are trading in the applicant's goods – should be repealed as it was incompatible with the Services Directive. The consultation asked (Question 7), however, whether circumstances could be envisaged in which these grounds could be used compatibly. Although 7 of the 40 respondents to this question explained why they felt it was a valuable ground for a Local Authority to use when considering street trading licence applications, the Government is not persuaded that this ground can be used compatibly with the Services Directive.
31. **Despite the support for maintaining these grounds, the Government does not believe that grounds 3(6)b can be justified under the Services Directive and therefore has no option but to repeal it.**
32. This section of the consultation also suggested that to compensate for the loss of 3(6)b, new grounds should be included in paragraph 3(6) to enable a local authority to refuse a licence application if it was of the view that a street was unsuitable for the type of trading

in which the applicant wanted to engage. The consultation made it clear that such grounds would have to be exercised compatibly with the Services Directive and asked (Questions 7.1 – 7.3) whether such grounds would be useful, the likely costs and the need for guidance in their use. This suggestion was made in response to concerns expressed by local authorities before the consultation that the potential removal and amendment of grounds for refusal would adversely affect their ability to control their town street environments.

33. Since the consultation was launched, however, the Government's de-regulatory approach to legislation in general and that affecting businesses in particular has strengthened. All legislation intending to restrict businesses or increase their costs – these discretionary grounds would likely do both – is subject to intense scrutiny. In addition, the Government's approach to implementing EU legislation has also become stricter with respect to "gold-plating" – going beyond what is strictly necessary to implement the legislation.
34. Of the 36 local authorities that responded to this question, 30 supported the proposal. Scenarios offered for when it would be useful included that it would help protect public safety if there was a specialised event or road works or it could be used to refuse a licence to sell fast food close to a school. Despite the support for the proposal, however, the evidence received about how these grounds might be used was insufficient relative to the high standard to justify the regulation needed to take this forward. Therefore, **the Government does not intend to introduce new discretionary grounds for refusal of a licence based on the suitability of the particular street.**
35. The consultation considered that the discretionary grounds 3(6)c – the applicant wants to trade for too few days each week – and 3(6)g – the applicant has failed to use a previous licence sufficiently – were incompatible with Article 16 of the Services Directive with respect to temporary traders, though they could be justified for established traders in some circumstances. It was therefore proposed that they should be modified to prevent the grounds being used for temporary traders. An option was to repeal them completely.
36. The consultation asked (Question 8) whether there were any circumstances in which the existing grounds could be used compatibly and whether the amended grounds would actually be used solely for established traders. Of the 32 local authorities who responded to this question, 28 could not see any circumstances in which these grounds would be compatible in relation to temporary traders and all respondents agreed with the proposal to amend them, rather than repeal them. **The Government will therefore amend the discretionary grounds 3(6)c and 3(6)g so that they cannot be used with respect to temporary traders.**
37. In terms of when the 3(6)c and 3(6)g grounds could be justified for established traders, the consultation argued that these would only be compatible with the Services Directive if there was demand from other would-be traders for the licence to trade in the street in question. It proposed to amend this paragraph to ensure that these grounds were only used if those conditions were met. The consultation asked (Questions 8.2 – 8.3) if in that case local authorities would continue to use the grounds for established traders and whether they could foresee any difficulties in the proposed conditions.
38. Of the 34 local authorities that responded to these questions, 18 thought they would continue to use these grounds because it was unreasonable for licences to be renewed if

they were not sufficiently used by the licence holder. Slightly fewer, 9 respondents did not think they would use these grounds – some reasons given included that they hadn't used them in the past or that they were flexible about the usage of licences or that they felt that refusal should be at the discretion of the local authority.

39. On whether there would be problems with the proposed conditions, 19 of the local authorities who commented thought there would be difficulties applying them but this seemed to be based mainly on a view that they should be able to use their discretion and/or that that established and temporary traders shouldn't be treated differently. Slightly fewer, 15, did not see particular problems with the conditions.
40. In the light of these responses **the Government will amend paragraph 3(6)c and 3(6)g to prevent local authorities using these discretionary grounds for refusing a licence to an established trader unless there is demand from another established trader to use the licence.**
41. The consultation described how paragraph 3(8) discriminates against non-UK traders by allowing protection against refusal of a licence in a particular site if the applicant has previously been licensed for that site. It proposed to repeal this paragraph and asked (Question 9) whether consultees could see any problems with doing so and whether they agreed with the analysis in the consultation.
42. Of the 31 local authorities who responded to this question, 28 did not see any problems with repealing these grounds and 22 agreed with the analysis. Those that disagreed with the analysis disagreed with the assumption that each application should be considered on its merits regardless of which country the applicant was from. This is clearly discriminatory and **the Government will therefore repeal paragraph 3(8) of Schedule 4.**

#### Paragraph 4 – Duration of street trading licences

43. The consultation proposed to remove the specification in paragraph 4(6) of the time period of validity of street trading licences, currently 12 months. The Services Directive precludes an authorisation being applied for a limited period except in certain circumstances. The consultation recognised, however, that to prevent newcomers being excluded from the market, local authorities would need to be careful not to offer long licences where demand for them was high. On the other hand, they would need to avoid unnecessary restrictions when demand was low. The consultation asked (Question 10) whether consultees foresaw any problems with removing the time period, what the effects of having longer licences would be and the periods they would be likely to use.
44. Of the 42 local authorities that responded to this question, 36 did not foresee problems with extending the time period for licences providing they had flexibility to do so on the merits of each application. A few, 16, were concerned that longer licences could increase the barriers to entry for new traders. Of the 36 local authorities who commented on the time period, half thought they would use licence periods of more than 12 months while 15 thought they would keep the period at 12 months. For longer licences, the periods suggested were between 1 and 5 years.

45. In the light of these responses, **the Government will remove the specification of the time period of validity of street trading licences and expect local authorities when setting a time period to take into account the need to avoid unduly restricting entry to the market.**

### Paragraph 5 – Revocation of street trading licences

46. In parallel with the changes to paragraph 3(6) described above concerning grounds for refusal of a licence application, the consultation proposed to repeal or amend the equivalent grounds in paragraph 5(1) for revoking a licence.
47. The consultation asked (Question 11) whether it would be useful for the Government to issue guidance on the revocation grounds that could be justified under the Services Directive: 5(1)a – insufficient space; 5(1)b – unsuitability of licence holder; 5(1)c – failure to pay fees/charges. Nearly all the 35 respondents who answered this question agreed that it would be useful and so **the Government will issue guidance on the circumstances in which the revocation grounds 5(1)a, 5(1)b and 5(1)c can be used.**
48. The discretionary grounds for revoking a licence contained in paragraph 5(1)d – failure to use a licence sufficiently – were considered, in the same way as the equivalent discretionary grounds for refusal, to be incompatible with the Services Directive with respect to temporary traders. The consultation therefore proposed to amend these grounds so that they could not be used for temporary traders and asked (Question 11.1 – 11.2) whether there were any circumstances in which the grounds might be used compatibly for temporary traders and whether they should be amended or repealed.
49. Of the 31 local authorities that responded to this question, 20 did not think these grounds could be used compatibly for temporary traders. There was not a strong preference for amendment over repeal though slightly more respondents favoured amendment.
50. For established traders, the consultation asked (Question 11.3) whether local authorities foresaw difficulties in limiting the circumstances in which these grounds could be used to where there was demand for a licence from other would-be traders
51. Of the 31 local authorities who answered this question, 23 did not foresee difficulties in applying this condition.
52. **The Government will therefore amend paragraph 5(1)d to prevent local authorities using these discretionary grounds for revoking a licence to an established trader unless there is demand from another established trader to use the licence.**

### Paragraph 6 – Disapplication of the Provision of Services Regulation 19(5) in some circumstances

53. The EU Services Directive is implemented in the UK through the Provision of Services Regulations 2009 (PSRs) and the consultation described how regulation 19(5) 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 unless there are different arrangements in place, but these arrangements must be justified by overriding reasons of public interest (ORRPI) as specified in Article 9 of the Directive. Schedule 4 of the LGMPA does not currently make any such arrangements.

54. As Schedule 4 currently does not make arrangements for regulation 19(5) of the PSRs to be disqualified in any circumstances, there is currently a clash between the provision of regulation 19(5) of the PSRs which requires a licence to be deemed automatically granted if the Local Authority has not processed the licence application within a set period of time, and the existence of the circumstances set out in Schedule 4 which requires a Local Authority to turn down licence applications. Therefore regulation 19(5) should be dis-applied where there are mandatory grounds for refusal – the consultation proposed to do this by amending paragraph 6 of the Schedule.
55. The consultation also suggested that local authorities might wish to put in place administrative arrangements disapplying regulation 19(5) where no mandatory grounds for refusal applied (assuming such arrangements could be justified by one or more ORRPIs). Also, that they may wish to specify administratively the arrangements that would apply to a street trading licence that was deemed to have been granted under regulation 19(5) as a result of the application not having been processed in time.
56. The consultation asked (Question 12) whether consultees foresaw any problems with these proposals and whether local authorities should have the discretion to disapply 19(5). All bar one of the 31 respondents saw no problems with disapplying regulation 19(5) to Schedule 4 where there were mandatory grounds for refusal and 18 agreed that local authorities should have discretion to disapply regulation 19(5) or to specify the consequences of a licence that was deemed to have been granted.
57. **The Government will therefore amend paragraph 6 of Schedule 4 to disapply regulation 19(5) of the PSRs where mandatory grounds for refusal exist.**

### Paragraph 7 – Street trading consents

58. The consultation described two consequential amendments to paragraph 7 to reflect the changes described above. These were: to amend paragraph 7(3)a in the light of the changes to 3(4)a (mandatory grounds for refusal if an application contravened child employment legislation); and disapplication of regulation 19(5) of the PSRs, in the light of the changes to paragraph 6 described above, where mandatory grounds for refusal of the application apply.
59. The consultation also proposed that local authorities should have the ability to relax fully the prohibitions described in paragraph 7(7) of Schedule 4 on trading in consent streets from a van or other vehicle or from a stall, barrow or cart. Currently, paragraph 7(8) gives only a limited ability to do this.
60. The consultation asked (Question 13) whether consultees foresaw any problems with doing this and 41 of the 44 who responded did not. **The Government will therefore amend paragraph 7 of Schedule 4 to allow local authorities to relax the prohibitions in paragraph 7(7) in their entirety where appropriate.**
61. **The Government will also remove the specification of the time period of validity of street trading consents while making it clear that the period set should take into account the need to avoid unduly restricting entry to the market.** This is in parallel to the amendment to 4(6) – duration of licences – described in paragraphs 43 - 45.

## Paragraph 10 – Offences

62. The consultation proposed a consequential amendment to paragraph 10(1)d to reflect the changes to paragraph 7 described above to ensure that a breach of the revised prohibition remains an offence. It asked (Question 14) whether consultees foresaw any problems with this and 41 of the 44 who responded to this question did not. **The Government will therefore make consequential amendments to paragraph 10(1)d of Schedule 4 to reflect those to paragraph 7.**

## Screening of local authority legislation and consequential amendments

63. The consultation document listed the local street trading legislation that the Department was aware of at the time that required screening for compliance with the Services Directive and asked (Question 15) whether there was additional legislation in scope, whether changes as a result changes were needed and whether local authorities wanted the Government to include these in its secondary legislation. Question 17 asked for details of these changes and for appropriately drafted provisions. The consultation also asked (Question 16) about consequential amendments that would be needed if the proposal to repeal the Pedlars Acts was taken forward.
64. Proposed amendments to local legislation were received from Bournemouth, the London Councils, Canterbury, Leeds, Leicester, Liverpool, Maidstone, Manchester, Medway, Nottingham and Reading.

## Conclusions and next steps

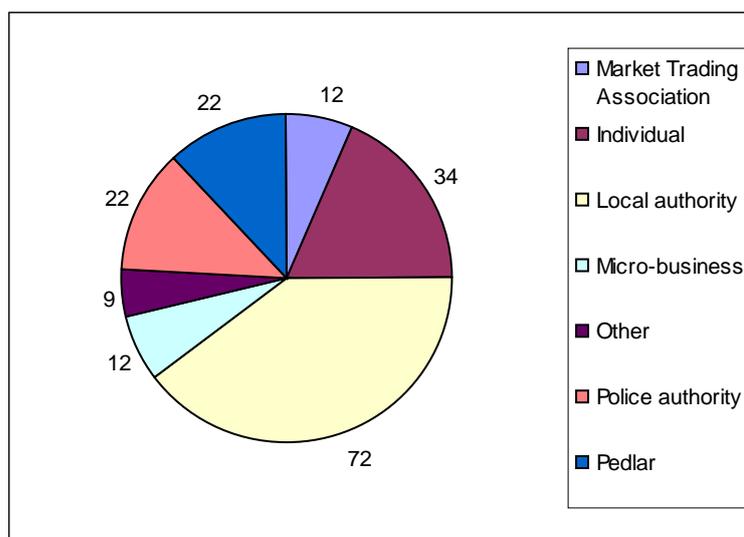
65. Following strong objections to the proposal to repeal the Pedlars Acts and to the proposed new definition of pedlary the Government has reconsidered how best to ensure the UK's pedlary regime remains compliant with the Services Directive. The Government believes that amending the certification process to make the good character check more objective but removing the residency requirement is a better way forward. It retains the control that local authorities and the police need to tackle illegal street-trading while minimising the impact on pedlars. Importantly, it retains UK legislation that specifically concerns pedlary – this was a critical issue for many pedlars who believed it to be essential to their legitimacy as a profession.
66. There was much more consensus in agreement with the proposals to amend the street trading regime to make it compliant and in most cases, the Government has been able to go with the majority view.
67. The Government recognises that the decisions set out in this document represent a balance between often opposing views. Local authorities working to make their town centres attractive and safe places for people to shop would often like to have more restrictions rather than less. The purpose of the European Union Services Directive, on the other hand, is to make trading easier, whether for established or temporary traders.
68. The Government will now work with the police to develop an objective good character check for the Pedlars Acts certification process using the experience from other certification processes. Secondary legislation will then be brought forward under Section 2.2 of the European Communities Act 1972 to effect the necessary changes to the Pedlars Acts and to the LGMPA. Where local authorities have provided details of

amendments required to local legislation, we will work with them to implement those changes at the same time.

69. The Government will also keep in close contact with the Northern Ireland Executive and the Scottish Government as they develop their responses to the parallel consultations on their street trading regimes.

# Annex A – The Consultation

1. The 2012/13 consultation ran for 19 weeks and closed on 5 April 2013. A press release was issued on the day that the consultation document was published on the BIS website.<sup>3</sup> The launch of the consultation was covered by several national and local newspapers and trade publications and on national television and online. A number of local authorities made the consultation available on their website and the pedlars.info group<sup>4</sup> also publicised it and gave information on how to respond. The consultation period was extended twice to ensure that all interested stakeholder groups had sufficient opportunity to respond.
2. In total, 183 responses were received from local authorities, police forces, pedlars, micro-businesses (mainly market traders) and their associations, other organisations and individuals. Responses were received by email, post and via an online questionnaire.



3. Some of the questions were addressed to a subset of these stakeholders – for example, to local authorities or to the police. Some respondents gave narrative responses rather than answering the specific consultation questions. Others answered only one or a few questions.

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<sup>3</sup> <https://www.gov.uk/government/news/bureaucracy-busting-boost-for-street-traders>

<sup>4</sup> [www.pedlars.info](http://www.pedlars.info)

# Annex B – The UK’s pedlary regime

## Analysis of responses

### Pedlars

1. The consultation document set out the reasons why the pedlar certification process, which consists of the need to prove residency in the local area for at least a month, that the applicant is over 17 years of age and is of good character, is incompatible with the Services Directive. It proposed that the certification process should be abolished and the Pedlars Acts repealed because the certification scheme is their main purpose. The consultation asked (Question 1) whether consultees agreed with this approach.
2. Of the 21 responses received from pedlars (including groups of pedlars), all except two were opposed to the proposal to repeal the Acts. Those against found the evidence for repeal unconvincing and argued that repeal was a disproportionate response and that the Acts should be amended instead – a response from the pedlars.info group representing 57 pedlars proposed ways to do this<sup>5</sup>. Some respondents thought that the certification process helped protect the public and that a pedlars’ licence was useful in proving identity. Some feared that repeal would mean that pedlars would no longer be able to trade legally and that they would lose their livelihood (this was not in fact the case as the proposal was to remove the restrictions on people becoming pedlars, not removing the right to be one). Two responses supported repeal, however, arguing that it would make becoming and trading as a pedlar easier. The majority view is illustrated by the following response:

“The Pedlars Act protects Pedlars. It does not need to be repealed but needs to be updated to fit inline with the EU [Services Directive] requirements... Having record of good character gives the public protection against unscrupulous traders.”

3. Several responses from pedlars complained that local legislation unduly restricted their ability to trade, for example by restricting them trading to house-to-house sales only. Others thought that local authorities tried to prevent genuine pedlars from trading in town centres because it was felt to be bad for the image of the area or unwanted competition with licensed street traders.

“The local council have made it clear that they do not want any pedlars within the city centre... my local council have made it clear that if pitches were to become available, I would not be considered since they consider the selling of hotdogs or burgers to be bad for the city image.”

### Local authorities

4. While some of the 73 local authorities that responded agreed that the Pedlars Acts were archaic, all were clear that there needed to be an equivalent process to check the identity and suitability of people who wished to trade as pedlars. There was not a consistent view

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<sup>5</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/153595/13-737-briefing-document-pedlars-info-written-questions-to-her-majestys-government.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/153595/13-737-briefing-document-pedlars-info-written-questions-to-her-majestys-government.pdf)

about whether this should be by retaining and modifying the Pedlars Act certification process or by repealing the Acts and bringing pedlars into the street trading regime. Without such reform, local authorities felt there would be a free-for-all for unlicensed and potentially illegal trading which would have a serious negative impact on town and city centres and on vulnerable householders subject to door-to-door selling.

“The Councils have concerns that the wholesale repeal of the Pedlars Acts, without any replacement registration provisions (at the very least) is undesirable. (London Councils)

5. The local authorities that disagreed with repeal wanted instead a more robust certification process for pedlars including a certificate with photographic proof of identity, particularly when selling door to door.

“The complete repeal of the Pedlars Acts will effectively give licence for anybody to trade on the street, or house-to-house, with complete anonymity” (Leeds City Council)

6. Many local authorities argued that pedlary should be brought within the street trading regime (Schedule 4 of the LGMPA) and licensed in a similar way to static traders. They felt that the current regime allowed pedlars paying a nominal sum for a certificate to compete unfairly with licensed street traders who paid significant amounts for a licence.

## Police

7. Of the 22 responses from the police, 14 were not opposed to or supported repeal and 5 were against (the remainder did not comment). But like local authorities, all were agreed that there needed to be an effective certification regime in place so that pedlars could be identified and their suitability for trading with the public checked. Suitability was normally checked by consulting police intelligence databases. One police force, however, did not find the Pedlars Act useful and, in the event of repeal, would be content to use other legislation if the individuals concerned caused problems.
8. The Association of Chief Police Officers (ACPO) canvassed its members and as a result challenged the statement in the consultation that there was a lack of evidence that pedlars who operated substantially within the current definition should be subject to an authorisation regime and therefore that as a result the certification process was not needed. Of the 2601 applications for a certificate between January and December 2012, 160 (6.3%) were refused and ACPO argued that this showed that the system for screening out unsuitable applicants was working. There was considerable variation in the level of refusals between police forces, however. One police force (Durham) rejected over half of the 12 applications it received in a 12 month period. It gave case studies of some of the reasons for this including previous convictions for dishonesty offences, intimidation of the elderly and handling stolen goods. It also had evidence of applications made using false addresses.
9. Some police forces did find the Pedlars Act certification process difficult. For example:

“It is outdated and needs to reflect modern trading, it is difficult to administer as there is confusion between Pedlars and Street Traders. No clear guidance on how to administer the system lead[s] to disparity in different force areas, even the

certificates themselves differ from force to force. Determining ‘good character’ is subjective.” (Northamptonshire Police)

“A known ‘doorstep criminal’ with a limited criminal record but with a huge intelligence record of doorstep criminality in his home force area can reside in another force area (for a minimum of a month), and be granted a Pedlars certificate, where the intelligence on him simply is not known. He can then go about his business (legitimate or otherwise) anywhere in the UK, apparently sanctioned by a Chief of Police.” (Nottinghamshire Police)

10. The consultation asked about the costs to the police of administering the Pedlars Act certification process. Between the 11 police forces that responded to the question on this issue, the number of applications varied considerably: Avon and Somerset had 133 in a 12 month period while Derbyshire had between 50 and 60. As above, Durham only had 12 and Bedfordshire had 3. Estimates of the time taken to process an application varied between 1 hour 20 minutes and 5 hours. The estimated cost of processing an application was usually more than the income generated from the £12.25 certificate fee but varied considerably between £12.56 and £75. For some forces, the administration was therefore a drain on resources while for others using a shorter process, it was much less significant.

### Micro-businesses

11. All except one of the 13 micro-businesses that responded to the consultation were market traders (one included a petition of 62 signatories from Grimsby Top Town Market) and all disagreed with the proposal to repeal the Pedlars Acts. Their concerns were that to do so would cause a free-for-all for anonymous traders and some thought it likely that there would be an increase in counterfeit or unsafe goods on sale. A widely held view was that it was already unfair that pedlars could trade in the same places as licensed traders. In some cases they were in direct competition with licensed traders but otherwise they reduced footfall and reduced the attractiveness of the street trading environment. Repealing the Acts would make matters worse. One respondent said:

“I feel that is an unfair proposition to expect licensed traders to be paying for rent and licences when another person can ‘plot up’ next to you, sell the same products and pay nothing.”

### Market trading associations

12. The associations representing traders and market and carnival organisers made similar arguments to the traders themselves. The National Association of British Market Authorities (NABMA) said:

“Implementing the BIS proposals will lead to unfair competition and the lack of a level playing field for market/street traders. This is a major concern...”

13. NABMA also did not accept that a good character check could not be maintained in a Services Directive-compliant pedlary regime, arguing that other EU laws and policy objectives needed to be taken into account.
14. The National Market Traders Federation was of the view that pedlars are street traders and should be subject to the same regulation and one respondent suggested that

Schedule 4 of the LGMPA should be applied to the whole of England and Wales – it is currently up to individual local authorities to decide whether to adopt it.

15. Others complained that pedlars did not put anything back into the local economy:

“It is extremely frustrating to see these people arrive, set up and start trading with no risk assessment, no health and safety guidelines, no business rates and no wage bill, making huge amounts of money... Money that should be going into the local economy but doesn't.” (Padstow Area Tourism Business Forum)

### Other responses

16. Two Business Improvement Districts in London responded and shared the views of NABMA and market traders. A London residents association did not agree with repeal and was concerned about any relaxation of controls on pedlars' activity. The Trading Standards Institute agreed and pointed to police evidence of specific individuals pretending to be certified pedlars being involved in distraction burglary. Instead of the current situation where different police forces issue different certificates, they called for a standardised pedlar's certificate which would be easy for any police officer to recognise.
17. The Direct Selling Association, representing companies which make off-premises sales (none are currently pedlars or street traders), agreed with the proposal to repeal the Pedlars Acts as they believed them to be ineffective in protecting the public from rogue traders. The DSA said it was against unnecessary regulation and thought that street trading controls should not be widened or extended.
18. In contrast, two sporting organisations – the Rugby Football Union and Manchester United Ltd were concerned about increased pedlar activity at major events from a public safety perspective. Both were against any liberalisation of the pedlary and street trading regimes.

### Individuals

19. All the responses from individuals were opposed to repeal of the Pedlars Acts. Most were from people worried that deregulation would cause an increase in unwanted door-to-door selling or shoddy goods being sold on the high street. They were also concerned about an increase in the exploitation of vulnerable people by unscrupulous traders.
20. Two respondents, however, were concerned that genuine pedlars should have the right to trade and repeal of the Acts would make this more difficult.

### Government response

21. In the light of these responses and having considered further the legal position regarding the compliance of the pedlar certification process with the Services Directive, the Government has decided not to repeal the Pedlars Acts but instead to amend the certification process to make it compliant. The requirement for residency in the local area will be removed as it discriminates against traders from other EU Member States. While the age limit does in some ways duplicate child protection legislation, that legislation does not cover all modes of pedlary and so we believe the age limit can be justified for reasons of public policy. The current requirement for good character is not specific enough to be objective and is inconsistently applied across the country. We will therefore work with the

police to develop a new good character check to be applied across the UK that addresses these failings using experience from other certification procedures.

22. The current definition of pedlary in the Pedlars Acts will remain unchanged.

## Proposal to amend Schedule 4 of the LGMPA

### The exemption for pedlars

23. The consultation proposed to introduce a new, modern definition of pedlary into paragraph 1 of Schedule 4 of the LGMPA so that with the proposed repeal of the Pedlars Acts, genuine pedlars would continue to be exempt from the national street trading regime as they are now. The definition was developed as a compromise between the restrictive requirements of some local authority Acts and the current very loose definition in the UK-wide Pedlars Acts and was based on a requirement for a pedlar to carry their goods and not to remain trading in one place.
24. The specific definition included:
- that a pedlar could trade either house-to-house or in the street;
  - if in the street, all goods had to be carried on the person or in a receptacle not exceeding 2 x 1 x 1 metres (height/length/width);
  - that a pedlar can remain static for a maximum of 10 minutes and should then move on at least 50 metres away and not return to within 50 metres of a previously occupied location for three hours; but
  - an exception to the 10 minute rule would be made if the pedlar was approached by a prospective customer.
25. While recognising that the existing definition is out of date and accepting the principle of the new one, there was almost universal disagreement with the descriptions of how it should be applied, from two opposing points of view.
26. Of the 12 responses on this issue from pedlars and pedlars groups, 10 were against the proposed definition and two supported it. Some of those who did not answer declined to consider the question because they were fundamentally opposed to repeal of the Pedlars Acts. Those that gave reasons for their disagreement with the definition thought that the descriptions of how pedlars should operate would unduly hamper their ability to trade freely.
- “These parameters you propose would be the death knell for myself, my wife and others and would prevent me from trading.” (A D & S Carter)
27. Of the 52 Local Authorities that responded to the question, 6 were in favour of the new definition. Another 12 were in favour but wanted it changed in various ways and were concerned about how it would be enforced. The majority (34 responses) did not agree

with the definition, either because the descriptions were too “generous” or because they were unworkable in practice with the enforcement resources available.

“The 10 minute rule as it is currently proposed would make it too easy for pedlars to manipulate the situation and create an artificial audience to justify not moving on after 10 minutes. This would prove almost unenforceable as local authorities and the police will not have sufficient resource to monitor and evidence breaches on this element of the exemption definition.” (Cambridge City Council)

“In smaller town centres... The proposals put pedlars more at risk of contravening regulations than complying with them. As an example our town centre consent area is approximately 230 metres long, a pedlar would only be able to stop 4 times before leaving... Monitoring of activity will be very time intensive.” (Newcastle under Lyme Borough Council)

28. Only a few police forces commented on this issue but those that did were more positive about the definition – 9 agreed with it, some with caveats, and 2 disagreed. The lack of detail in most responses, however, may reflect that the police would not be involved in enforcing compliance.
29. The few market trading associations that commented were against the definition and commented particularly on the size of the proposed receptacle which they felt was large and did not preclude hanging goods on extensions to it. The market trader micro-businesses did not comment on this question
30. Of the 18 individuals that responded, 13 were against the definition; the few that explained this cited similar objections to the local authorities.
31. The two responses from Business Improvement Districts had similar objections to the local authorities. Manchester United Limited had concerns about the proposed size of receptacle being too large on safety grounds. The Institute of Licensing thought that peddling should be incorporated into the street trading regime.

### Government response

32. In the light of the disagreement with the proposed definition and the polarisation of responses between pedlars and local authorities and other respondents, we believe it is unlikely that a mutually acceptable definition can be found and the Government has therefore decided not to amend the exemption for certified pedlars in Schedule 4 and to leave the current definition of pedlary in the Pedlars Acts unchanged.

# Annex C – Respondents to the consultation

Angel Business Improvement District	David Chapman	John Hudson
Naomi Aptowitzer	Cheltenham Borough Council	Mary Hughes
Gary Armstrong	Chester West and Chester Borough Council	Hull City Council
Association of Chief Police Officers	Chichester District Council	Humberside Police
Association of London Markets	Cleveland Police	Chris Hunt
Lesley Augur	Conwy Council	Mike Huntley
Avon and Somerset Constabulary	Cornwall Council	Ideastreet
John H Barham	Dartford Council	Institute of Licensing
Bath and North East Somerset Council	K Davies	Ipswich Borough Council
T Batson	Anthony Phillip Dean	Islington Council
Battery Celler Ltd	South Derbyshire District Council	J R Holland Produce LLP
Bayswater Road Art Exhibition	Derbyshire Police	David Jackson
M J Beanland	Direct Selling Association	Keith Baker Design and Management
Bedfordshire Police	Billy Duffield	Royal Borough of Kensington and Chelsea
Better Bankside Business Improvement District	Durham Constabulary	Leeds City Council
Birmingham City Council	Durham County Council	Leicester City Council
Bournemouth Council	Eastbourne Town Centre Management Initiative	Leicestershire Police
Mark Bowen	M Emmans	Margaret Leppard
Bracknell Forest Council	Shaun Ewings	London Borough of Lewisham
Bristol City Council	Fylde Borough Council	Lincoln Business Improvement Group
Bromley Council	Christopher George	Liverpool City Council
Frank N Brook	Barry Gimp	Local Government Association
W S K Bryan	Gloucestershire Licensing Officers Group	City of London
Buckingham Town Council	Gwent Police	London Councils
Burnley Borough Council	Allan Hallsworth	Alexandra Lort Phillips
Bury Council	Harrogate Borough Council	Gavyn Macer
Cambridge City Council	Peter Harvey-Rice	Maidstone Borough Council
Canterbury City Council	Martyn Head	Association of Greater Manchester Authorities
Cardiff Council	John Heaton	Licensing Managers Group
A, D & S Carter	Herefordshire Council	Manchester City Council
Natalie Casey	Hertfordshire Police	
	D Hobson	
	Lena Holt	

Greater Manchester Police	Anthony Parker	Pauline Terry
Manchester United football club	Rhona Parks	Jackie Terry
Mark Bowen Caricatures	Pedlars.info	Test Valley Borough Council
Paul Marshall	Pembrokeshire County Council	Thames Valley Police
Mark Mascall	Pendle Borough Council	The Newspaper Society
Julian McDonnell	R Perzyna	Torbay Council
N McGerr	Plymouth City Council	Trading Standards Institute
Stanley Melinek	Poole Local Authority	Trafford Council Public Protection Service
West Midlands Police	Charles Pratley	Joe Turner
Monmouthshire County Council	Aleksandar Rakic	South Wales Police
David Moore	Reading Borough Council	Spencer Watkins
I L Morrison	The Richmond Society	S Watson
National Association of British Market Authorities	James George Robertson	C Webber
National Market Traders Federation	Carl Robertson	Borough Council of Wellingborough
Newbury Town Council	ROX - promoting Oxford business	Valentine West
Newcastle Under Lyme Borough Council	Rugby Football Union	West End Street Traders Branch
Newcastle upon Tyne City Council	Rushmoor Borough Council	Westminster City Council
Newcastle upon Tyne Street Traders Association	K,T & L Schwersenz	Weston Carnival
Neville Nicholson	Lorna Sharp	Wiltshire Council
Robert Nixon	Sheffield City Centre Retailers Group	City of York Council
Association of North East Councils	Sheffield City Council	North Yorkshire Police
North East Trading Standards Association	Robert Slater	South Yorkshire Police
Northamptonshire Police	Melanie Smallman	West Yorkshire Police
Northumbria Police	Southampton City Council	
Nottingham City Council	Southwark Council	
Nottinghamshire Police	St Albans City & District Council	
John Osborne	St Helens Council	
Oswestry Town Council	Staffordshire Police	
Oxford City Council	Stockton-on-Tees Borough Council	
South Oxfordshire and Vale of White Horse Councils	Sunderland City Council	
Padstow Area Tourism Business Forum	Surrey Police	
Padstow Town Council	Swadlincote Market Housing and Community Services Committee	
	Swindon Borough Council	
	T J Tatler	
	Tees Valley Local Authorities	

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