



## SHEFFIELD CITY COUNCIL Committee Report

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**Report of:** Chief Licensing Officer, Head of Licensing

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**Date:** 5<sup>th</sup> February 2013

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**Subject:** **Government Consultation:**  
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.

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**Summary:** To inform Members of a consultation paper that has been released by the Department for Business Innovation & Skill, to consult with Members regarding the new proposed draft regulations, amendments to the Local Government (Miscellaneous Provisions) Act 1982, and to obtain their comments for the Licensing Authority's response.

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**Recommendations:** That Members consider carefully the details of the consultation document and make any relevant comments that they wish to be included in the formal Licensing Authority response.

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**Background Papers:** Street Trading and Pedlary Laws  
Compliance with the European Services Directive  
November 2012

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**Category of Report:** OPEN

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**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982  
DEPARTMENT FOR BUSINESS INNOVATIONS & SKILLS CONSULTATION  
Street Trading and Pedlar Laws**

**1.0 PURPOSE AND OUTCOMES**

- 1.1 The purpose of this report is to inform members of a consultation paper that has been released by the Department for Business Innovation & Skills (BIS), to consult with members regarding the new proposed draft regulations, amendments to the Local Government (Miscellaneous provisions) Act 1982 (LG(MP)A), and to obtain their comments for the Licensing Authority's formal response.
- 1.2 The full consultation documents has been forwarded to members in December 2012, however a full copy can be downloaded at the following website:  
[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](http://www.gov.uk/government/consultations/street-trading-and-pedlary-laws-a-joint-consultation-on-draft-regulations-to-repeal-the-pedlars-acts-uk-wide-and-make-changes-to-the-street-trading-legislation-in-england-wales-and-northern-ireland)
- 1.3 The outcomes of this report are to ensure that members are aware of the content of the consultation paper and to allow Members the opportunity to input their comments into the Licensing Authority's formal response.

**2.0 BACKGROUND**

- 2.1 The consultation document seeks to ensure that the street trading and pedlary regimes comply fully with the requirements of the European Services Directive. The UK Government and the Northern Ireland Executive are seeking views from stakeholders in relation to the repeal of the Pedlars Acts, changes to their respective street trading regimes alongside the proposed new regulations.
- 2.2 In brief, the BIS consultation is seeking our views on the following:
- Repealing the Pedlars Act 1871 and 1881 UK-wide
  - Keeping Pedlars as an exemption under the Street Trading regime with a new definition under the proposed regulations.
  - Changes in the Local Government (Miscellaneous Provisions) Act 1982 Schedule 4 to ensure compliance of the European Services Directive.
  - Screening of local Acts that require consequential amendments as a result of the proposed amendments to schedule 4 of the LG(MP)A 1982 and the proposed repeal of the Pedlars Acts.
- 2.3 The closing date for comments to the BIS consultation paper is 15<sup>th</sup> February, 2013.

### **3.0 CONSULTATION**

- 3.1 This consultation document has been forwarded to South Yorkshire Police, Safeguarding Children's Board, City Centre Management Team and Members of the Licensing Committee for their comments.
- 3.2 The City Centre Management Team of Sheffield City Council and South Yorkshire Police will be responding directly to BIS and therefore their comments have not been included.
- 3.3 A draft response to the consultation document is attached at appendix 'A'. Members will note that Sheffield City Council only issue 'consents', therefore questions 1.1-1.3, 6, 7, 8, 9 and 11 relating to licences have not been answered.
- 3.4 The draft response also includes comments from Sheffield's Safeguarding Children's Board at questions 2 and 5.

### **4.0 SCREENING LOCAL ACTS**

- 4.1 In Chapter 3 of the document, Local Authorities are requested to screen their local Acts against the Directive's requirements and any consequential amendments with the proposed changes.
- 4.2 We have identified that section 67-78 inclusive (Part VIII - street trading) of The South Yorkshire Act 1980 requires repealing as Sheffield City Council have adopted the LG(MP)A 1982 for street trading.
- 4.3 The Licensing Authority have consulted with Barnsley, Rotherham and Doncaster Local Authorities which also fall under the scope of the local Act, and they have confirm of their agreement on the repeal of the relevant parts of the above Act.
- 4.4 BIS have indicated two ways in which to repeal section of our local Act to ensure compliance of the Directive:
  - 1. 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
  - 2. BIS will include the necessary repeals/amendments in their proposed regulations, provided that the relevant local authority provides appropriately drafted provisions (drafted by Parliamentary Agents) with adequate explanation as to why those repeals/amendments are needed (by the 15th February 2013).
- 4.5 It is felt that drafting provisions as in option 2 above would save a considerable amount of time and expense compared to option 1.
- 4.5 Doncaster, Rotherham and Barnsley local authorities have been consulted in respect of a shared agreement in amendments of the South Yorkshire Act and shared cost of a Parliamentary Agent.

## **5.0 NEXT STEPS**

- 5.1 The results of this consultation exercise, including a summary of the views expressed, and the Government's response will be published no more than three months after the close of the exercise.

## **6.0 FINANCIAL IMPLICATIONS**

- 6.1 There will be costs incurred for the use of a Parliamentary Agent to draft provisions to repeal sections of the South Yorkshire Act 1980. It is anticipated that these costs will be shared with Rotherham, Barnsley and Doncaster local authorities and will be fairly minor.

## **7.0 RECOMMENDATIONS**

- 7.1 That Members consider carefully the details of the consultation document and make any relevant comments that they wish to be included in the response.
- 7.2 That Members make amendments or additions to the draft response to the Government consultation.

Steve Lonnia  
Chief Licensing Officer  
Head of Licensing  
January 2012

# Appendix 'A'

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Rachel Onikosi  
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1 Victoria Street  
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Via email: [stcompliance@bis.gsi.gov.uk](mailto:stcompliance@bis.gsi.gov.uk)

Dear Sir/Madam

## **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**

I refer to the above and I thank you for the opportunity to respond to your consultation document published November 2012.

#### **Consultation Response**

Sheffield City Council only issue 'consents', therefore questions 6, 7, 8, 9 and 11 relating to licences have not been answered.

For ease of reference I have addressed the remaining questions in number order below with our response followed by each question:

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

Yes, we agree with the proposed repeal of the Pedlars Acts 1871 and 1881 UK wide as the legislation is now outdated and it is increasingly difficult to enforce Pedlars.

**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.*

We do not agree with the proposed new definition of a pedlar for the purposes of the pedlar exemption from the 'national' street trading regime.

We feel that a Pedlar should not remain an exemption under schedule 4 of the LG(MP)A.

Should it remain an exemption, there should be an authorisation scheme which would clearly be justified by an overriding reason to the public interest (Art 9). There are significant public safety and security issues as well as public health and protection of consumers. We feel it is extremely important that any person who is permitted to trade should go through an authorisation scheme, to ensure they are fit and proper. This could include a police check or equivalent vetting. Traders come into contact with children and other vulnerable people who we need to afford extra protection. Local Authorities would not know whether Pedlars have a right to work, if they are claiming benefits or if they are illegal immigrants. Failure to implement an authorisation scheme would cost Local Authorities and other agencies time and money on enforcement.

The proposed definition also allows pedlars to trade in pedestrian areas. We feel that this should be omitted from the definition as other authorisation schemes are in place should they wish to do this. Most pedestrian areas likely to be used by pedlars are city/town centres which are managed by council departments taking into account local economy needs accordingly. Pedlars under this definition would overcrowd, cause obstruction and limit how the area is used. We feel that a pedlar should be trading on foot by means of visits from house to house and town to town as was originally intended.

Paragraph 2A of the draft regulations state that pedlars would be trading on foot, would this be from their place of residence? Do the pedlars have any resting time? The regulations need to be clear and concise so pedlars and local authorities are aware of what is permitted.

Local Authorities continually receive complaints regarding pedlars and their receptacles from businesses and the general public. The definition should therefore reduce the size of the 'receptacle' permitted by a pedlar. The dimensions listed in the proposed draft regulations are too generous and would cause problems on any street/road with regards to obstruction, public safety and protection of the environment.

The exemption does not include any measure about how many are permitted in an area, or how far away they should be from other pedlars. There is also no restriction on the type of goods which would be a concern. We would have issues with a pedlar selling living things as we would need to ensure that the animals are kept adequately and safe (health of animals) which again is an overriding reason of public interest.

The exemption does not state anything about selling food. Any pedlar under this exemption selling foodstuff hot or cold causes danger (hot plates, gas bottles, food hygiene, etc) and nuisance (odour etc) which will require extensive enforcement activity to control.

Sub paragraph 2D gives a restriction of 3 hours, who would monitor and enforce this. Current issues regarding Pedlars are hitting Local Authorities with substantial time and costs enforcing Pedlars that are illegally street trading.

The definition does not state the minimum age a Pedlar can be. Whilst there is adequate provision for safeguarding children of compulsory school age in other primary legislation,

existing legislation (CYP Act 1933, 1963 and local Byelaws) does not make adequate provision for safeguarding children of non compulsory school age (sometimes aged 15 years) working in the context of pedlary.

This would impact on the safety and welfare of young pedlars and on the statutory services for the following reasons:

(i) Children of non compulsory school age (as young as 15 years) working as pedlars would not be required to obtain consent to trade from the police. This would result in a lack of supervisory, regulatory and protective arrangements for young people aged 15 or over. Pedlary involves working in transient, unpredictable environments, approaching strangers or being approached, for trade. Routinely a young person may carry about their person valuable goods or cash. The peddling environment is difficult to risk assess.

One impact of the proposal therefore would be that children aged 15 years or over may be at risk of harm, affecting their safety and welfare.

(ii) The activity of children peddling in an unregulated context may impact on the resources of the local statutory services, such as police, children's services and licensing authorities, which would need to make arrangements to monitor peddling activity to safeguard the children involved. (Such arrangements may include the administration and enforcement of a permit scheme; a requirement for a risk assessment to be undertaken and the provision of a registered adult who is appropriately vetted with designated responsibility for the supervision of the young pedlar; identity cards for young traders and supervisors.)

The draft definition and the requirements under it are not clear and are open to abuse, courts could interpret the regulations differently making it difficult for authorities to control and enforce.

Sheffield City Council openly welcome legitimate traders, we regularly have continental markets however they are regulated as we need control of what is happening in the city centre.

**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)*

To ensure consistency we as a local authority would designate a street as a licence/consent street in relation to both established and temporary traders, we would not find any circumstance where we would not.

Designating streets as a licence/consent street will ensure that we as a Local Authority are ensuring certain issues which are in the public interest is taken into account and therefore an authorisation scheme would be required taking into account Art 16.

**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)*

Yes, we agree and fully support that only one photograph is needed when applications are submitted electronically.



**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).*

Whilst there is adequate provision for safeguarding children of compulsory school age in other primary legislation, the Sheffield Safeguarding Children Board does not agree that the mandatory age requirement for street traders (to be aged 17 years or over) should be removed, because existing legislation (CYP Act 1933, 1963 and local Byelaws) does not make adequate provision for safeguarding children of non compulsory school age (sometimes aged 15 years) working in the context of street trading.

Street trading involves working in a public environment that is not controlled, including working outdoors selling goods at high capacity events such as football, music/entertainment where alcohol may be on sale and where the customer base is transient and unpredictable; it involves the exchange of goods for cash. The street trader environment is difficult to risk assess. This means that young street traders aged 15 years or over may be at risk of harm, affecting their safety and welfare.

For the above reasons, the minimum age should be retained.

If the mandatory minimum age requirement is removed, there would be an impact on the resources of the statutory agencies because additional safeguarding arrangements would need to be in place for children of non compulsory school age who are registered with the local authority as street traders but who would not be adequately protected under existing legislation. (Such arrangements would run alongside the existing registration/consent requirement and may include the administration and enforcement of a designated supervisor scheme; a requirement for a risk assessment to be undertaken; identity cards for young traders and supervisors.)

**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?*

We currently have had very little interest. There may be however possible applications from 16 years who are doing projects after leaving school.

We would foresee that we would get more (assistants) helping parents who are consent holders than applying individually for a consent/licence.

**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)*

We do not see any problems with the proposal to give Local Authorities flexibility to grant licences/consent for longer than 12 months or indefinitely as long as the flexibility is a choice to grant up to a certain period and not for a minimum duration.

Although we are not against this proposal, primary legislation will need to be altered to deal with the impact of an indefinite consent, for example what happens if the consent holder dies, or other such circumstances?

As an Authority, we will need to review and re-assess consents annually to ensure that reasons relating to public interest such as public safety, public policy, security etc are considered within appropriate times (ORRPI).

**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?*

We would suggest that this would give a negative effect. Issuing long term or indefinite consents could affect the local economy and the closure of businesses. Local economic factors should be taken into account when issuing consents as areas change and the suitability of issuing such consents.

**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?*

(i) Sheffield City Council would keep to issuing consents for a maximum of twelve months. This would give the Local Authority an opportunity to assess/review the application and the trader and what is happening within the locality of the consent area. This process would ensure all the overriding issues of public interest such as public safety, policy, security and health are considered on an annual basis.

(ii) Sheffield City Council would keep to a maximum of twelve months for a consent.

**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)*

(i) We would foresee some problems as there may be other overriding reasons in the public interest that we may need to refuse an application other than mandatory grounds. We would need to ensure that the applicant is suitable as they could be in contact with children and vulnerable persons, there may be traffic regulation orders that make it unsafe for any trader to be located there.

(ii) As a Local Authority, we would prefer that we can put arrangements in place to disapply the regulation in other circumstances. We would then be able to take into account issues of public interest and present the case to a Licensing Committee for determination if required.

**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)*

We foresee no issues or problems with the proposals to allow a relaxation in paragraph 7(7) in its entirety where appropriate. Applicants would be treated fairly and give them more scope and variety of the type of business they wish to promote.

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

We foresee no problems with your proposals to amend paragraph 10(1)(d).

**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).*

There are no further local Acts to disclose other than the South Yorkshire Act 1980 – sections 67-78 which are already listed at Annex B of your document.

**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.*

- (i) Yes - South Yorkshire Act 1980 – sections 67-78
- (ii) Yes, we would require the repeal in the 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.*

(i) Section 78 of the South Yorkshire Act 1980 require consequential amendments as a result of the Pedlars Act.

(ii) None.

(iii) South Yorkshire Act 1980 is still 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)?*

(i) Sections 67-77 of the South Yorkshire Act 1980 will require consequential amendments as a result of proposed amendments to Schedule 4 of the LG(MP)A.

(ii) None.

There are four authorities making up South Yorkshire, namely; Sheffield, Doncaster, Rotherham and Barnsley and the South Yorkshire Act 1980 applies to each. All four authorities agree that sections 67-78 should be repealed.

Yours faithfully

Mr Stephen Lonnia

Chief Licensing Officer

Head of Licensing

Enquiries to: **Licensing Service on 0114 2037752**