

Consultation on the regulation of street trading and pedlary

Purpose of the report

To agree the approach of the LGA response to the Government's consultation on the regulation of street trading and pedlars.

Summary

The Department for Business, Innovation and Skills (BIS) is consulting on proposals to amend laws regulating street traders and pedlary. The amendments are designed to ensure that UK legislation complies fully with the European Services Directive, the primary aim of which is to eliminate barriers to service providers and make it easier for street traders to operate anywhere in the EU.

The LGA welcomes Government steps to review laws relating to street trading and pedlary, which have long been outdated and confusing. The laws need reviewing not only to accommodate the requirements of the Services Directive, but more importantly in our view to ensure there is a robust system of safeguards and sanctions in place to protect residents, businesses and communities from unscrupulous practices.

Although existing licensing regulations will continue to apply to street traders, this consultation proposes removing all regulation of a new definition of pedlars. We know that many of our member authorities have resorted to local acts to regulate pedlary and we will therefore want to press the Government to move ahead with a parallel commitment to examine what enforcement tools can be made available to tackle business and resident concerns about pedlars in the future. The LGA believes that councils should have a clear and consistent set of tools available to respond to the needs of residents and businesses when appropriate.

The consultation closes on 15 February and is available online at <http://www.bis.gov.uk/Consultations/category/open>

Recommendation

Members are asked to comment on the draft response below.

Action

Officers to finalise the LGA response, in line with Members' comments.

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Background

Current approach to licensing pedlars

1. Under the Pedlars Acts 1871 and 1881 a person intending to trade as a pedlar must apply for a pedlars certificate from the police. The definition of pedlar focuses on the sale of goods on foot and would include selling paving, driveways, household products, homemade goods, fish, books or paintings.
2. Applicants must have resided in the police area where they apply for at least one month, be of good character and be above 17 years of age. Licences are applicable UK wide once granted and there are approximately 4000 currently in place.
3. A limited number of local authorities have obtained private Acts of Parliament to provide them with powers to regulate pedlar activity in the same way as street trading, such as restricting pedlars to door to door sales in designated streets rather than selling goods directly to customers in the street.

Current approach to licensing street traders

4. Under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 councils can adopt powers to regulate street trading. The definition of street trading includes the sale of goods in the street, rather than services, and excludes those acting as certified pedlars selling their goods on foot. The Act provides councils with the power to license street trading in specified streets, operate a consent system for street trading or prohibit street trading in named streets.

Proposed amendments

5. Government has reviewed the regulation of both street trading and pedlars in light of the EU Services Directive.
6. The Government is proposing to repeal the Pedlars Act 1871 and 1881 because it does not comply with the Services Directive. Government is committed to ensuring that 'genuine' pedlars can continue to operate with the minimum number of restrictions. As such, it is proposed that a new definition of pedlar will be introduced. Pedlars meeting the new definition will be exempt from any form of certification or licensing.
7. The proposed definition for pedlars focuses on the fact that pedlars travel and trade on foot and includes tighter limitations on the amount of goods to be carried and the amount of time they can remain stationary in order to attract trade, and how soon they can return to locations.
8. The Government has proposed a range of other amendments to Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 to ensure it meets the requirements of the Services Directive. These include reducing the grounds for refusing a street trading application and increasing flexibility about the period of a licence. The Institute of

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Licensing is working with councils to understand the implications of these technical amendments.

9. Councils with their own street trading or pedlar related legislation will need to ensure it complies with the Services Directive. BIS has offered to include any repeals or amendment to the 33 local acts that reference pedlary in the proposed national regulations if provided by 15 February 2013, however, they have not provided any advice to councils on whether local restrictions relating to pedlars can simply be reapplied to the new definition or whether they must be repealed because they no longer comply with the Services Directive.

Implications for councils

10. This proposal has the potential to impact significantly on a number of councils and their communities. We hear regular complaints about the activities of street traders forcefully selling their products, which has prompted many residents' associations to set up No Cold Calling Zones, and created difficulties with enforcement. At the time when we are doing everything possible to encourage customers and residents to high streets and town centres, the potential for an increasing number of pedlars, operating much more freely, has the potential to undermine much of that good work. At the announcement of this consultation, we therefore publicly stated our concern to the relaxation around regulations of street traders and pedlars, warning against a rise in door to door sellers who could put the elderly and vulnerable at risk.
11. It is important that councils are able to effectively manage their town centres and streets to encourage economic growth, while still protecting their residents and visitors from fraud and nuisance. While councils and the police will retain powers to tackle illegal activity, such as selling counterfeit goods, harassment and fraud, councils will be unable to address ongoing resident and business concerns about pedlar activity in their communities. The proposals by BIS fail to recognise the unease that can be associated with itinerant business, which has been exemplified in recent years by concerns about face to face fundraisers and scrap metal collection. Residents and businesses suffer from the cumulative impact of such activity and often want their council to respond to their concerns. We strongly believe that further thought needs to be given to what measures can be made easily available to councils where specific and persistent issues occur associated with pedlar activity.
12. As with most regulatory activity, a balance needs to be struck between ensuring that the free market intentions of the Directive are adhered to whilst at the same time respecting the needs of communities and dealing effectively with street trading or pedlar activity that creates concern. With this in mind, the Government has committed to working with local authorities to identify the precise challenges street trading brings with the aim of bringing in a new legal framework which enables authorities to respond to illegal street trading. The LGA welcomes any steps to understand the needs of councils and their communities, however, this work must include both pedlary and street trading and be carried out in parallel with the development of new regulations to ensure that the whole scheme is fully thought through from the outset.
13. The simplest and most straight forward way of giving councils the ability to respond to concerns about pedlars would be to include pedlary within Schedule 4 of the Local

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Government (Miscellaneous Provisions) Act 1982. This would give councils discretionary powers to tackle specific issues in the same way as street trading. It would provide a clear and consistent approach to the regulation of both street trading and pedlary, which could be easily understood by both residents and businesses. Councils are highly experienced at balancing the needs to businesses, the wider economy and the needs of local residents. As such, these powers would only be used in a proportionate manner to target specific concerns and in full consultation with local communities.

14. In public BIS Ministers have argued that removing these barriers will help small traders, including many young entrepreneurs, rather than compliance with the Services Directive. We remain sceptical about this argument in relation to such a specific sector and we are seeking views from the Federation of Small Businesses as to the scale of this activity.
15. The LGA believes that it is vital for BIS to take urgent responsibility to work proactively with all councils that have local legislation relating to pedlary and street trading to minimise the burden on individual councils and provide further clarity about what amendments are required to meet the requirements of the Services Directive.

Next Steps

16. Subject to Members' views on this overall approach, officers will draw up a detailed response to send in to BIS. This paper and our final response will be widely shared with our member authorities.