



CAMBRIDGE CITY COUNCIL

REPORT OF: Emma Thornton- Head of Tourism and City Centre Management

TO: Licensing Committee –28th January 2013

WARDS: Market ,Castle and Newnham

Street Trading and Pedlar Laws- Compliance with the European Services Directive- Government Consultation

1) **INTRODUCTION**

In November 2012 Government advised that it must bring its legislation governing street trading in line with the requirements of the European Services Directive, namely Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982, LG(MP)A and the UK-wide Pedlars Acts 1871 and 1881. Member States and the EU recently agreed that street trading and pedlary, is within scope of the Directive. Intervention is necessary to ensure compliance with the Directive.

In summary the Government is proposing to repeal the Pedlars Act 1871 and 1881 and to include a more precise and up to date definition of a “Pedlar” to be inserted into the pedlar exemption from street trading legislation, which is included in Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982.

In addition the UK Government proposes to make some amendments to Schedule 4 to the LG (MP) A, in particular concerning 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.

In this consultation the Government are not presenting options for a way forward as it is obliged to change national law where it conflicts with European Law. They are however seeking comments on their proposals and the implications of these changes.

This report sets out a summary of the main proposed changes and the implications for street trading in Cambridge which could be significant.

The consultation began at the end of November 2012 and closes on 15th February 2013. The Government have committed to publish the consultation response within 3 months of the consultation closing. A response from Government on the consultation is expected within 3 months. This will include a summary of the views expressed and the decisions made in light of the consultation, and the reasons for the decisions taken.

2) RECOMMENDATIONS

- 2.1 To authorise the Head of Tourism and City Centre Management to develop a City Council response to this consultation together with the Chair, Vice Chair and Opposition Spokes of this Committee taking into account the concerns and points raised by this Committee. This response will be informed by the response being made independently by the Police, the Cambridge Street Traders Association and other stakeholders.
- 2.2 Following Government's confirmation of the outcome of this consultation, to request the Head of Tourism and City Centre Management to bring a report back to this Committee. This report will set out any amendments required to the Council's Street Trading Policy as a result of the changes to legislation.
- 2.3 To authorise the Head of Tourism and City Centre Management to write to Cambridge MPs Julian Huppert and Andrew Lansley to request that they support the City Council's response and to lobby Government in this regard.

3. BACKGROUND

3.1 Requirements of the European Services Directive

- 3.1.1 The primary aim of the Directive is to make it easier for 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 (referred to in this report as an “established traders”) 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 (referred to in this report as a “temporary traders”).

3.1.2 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.

3.1.3 In summary:

Article 9 applies to “established traders” as set out above and states that any authorisation scheme must be non discriminatory and that there must be a justifiable reason relating to public interest to justify an authorisation scheme.

Article 16 applies to “temporary traders” as set out above and in essence states the same.

3.2 Repeal of Pedlars Act 1871` and 1881

3.2.1 The Government is proposing to repeal the Pedlars Acts 1871 and 1881 in relation to the whole of the UK because it is their view that the authorisation scheme currently used for licensing pedlars (as set out in this Act) is not compliant with Articles 9 and 16 of the Directive. This is because to be compliant with the Directive there must be an overriding reason relating to the public interest to justify an authorisation scheme. In the case of pedlars is the government’s view that this does not exist.

3.2.2 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.

3.2.3 The Government has concluded that as all three criteria above are not compatible with the Directive then retention of the Pedlar certification scheme would not be compatible with the Directive. As the certification scheme is the main purpose of the Pedlars Act it is proposed that this be repealed in its entirety.

3.3 **Proposed Exemption for Pedlars from Schedule 4 to the LG (MP) A**

3.3.1 Following repeal of the Pedlars Acts, the Government considers it important that “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.

3.3.2 They are proposing to insert into Schedule 4 to the LG (MP) A a detailed definition of what activity constitutes a pedlar for the purposes of the pedlar exemption. It is their considered view that this is clearer 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 remit of the street trading regime. It is proposed that this should also make it easier for local authorities to take enforcement action against illegal street traders. At this point in time council officers do not share this view, and in contrast believe that this new definition will make it more difficult to enforce illegal behaviour.

3.3.3 **The key elements of the new definition are as follows:**

- They must trade only on foot
- They are required to trade either from house to house or whilst travelling through the streets or a combination of both.

3.3.4 They are also required to comply with the following four requirements. as set out below:

- a) 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.

It is the Government's view that the size of the receptacle as specified above balances the rights of pedlars to trade with other street users and to keep the streets reasonably free of obstruction.

- b) That a pedlar can remain static in the same location for a maximum of 10 minutes after his arrival there.
- c) 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.
- d) He cannot immediately return to the first location 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.

3.3.5 However a pedlar may be approached by one or more potential customers during the 10 minute period and, in circumstances that he's unable to conclude the transaction, he may continue to remain in that location for a period beyond the 10 minutes. Once all transactions have been concluded the pedlar must continue to move away immediately.

3.3.6 There are two key areas of concerns for the Council with regards to this revised definition of a pedlar:

- a) The proposed dimensions of the receptacle are very generous. There could be public safety issues encountered in busy areas if a number of these receptacles are being pushed around at the same time. In addition they are not that dissimilar in size to some of our static street trading units.
- b) The prospect of a pedlar creating an artificial audience to allow him to remain in the same position for an extended period is likely

to cause problems for the Council. With the Government's proposed definition as set out above, It would be extremely difficult to evidence illegal street trading therefore making it difficult to enforce.

3.3.7 NABMA (National Association of British Market Authorities) have reported that it is their view that the proposals put forward by Government place pedlars at significant advantage to market and street traders. In addition if pedlars are to retain an exemption under the street trading legislation then much tighter controls needs to be introduced to maintain standards and to ensure that public safety issues are not compromised.

They also report their concern that Government have put these proposals forward but leaves enforcement for some unspecified time in the future.

4. Other proposed changes to the LG(MP)A 1982

4.1 These proposals are designed to :

- Enable street traders to engage in trading activity more easily and
- Reduce administrative burdens on street traders, and produce cost savings for them

4.2 The street trading regime regulates the activities of static street traders. It is applied and enforced by local authorities. In particular, it concerns the designation of streets, the granting and refusal of licence/consent applications, and the process for appealing against a local authority decision to refuse or revoke a licence or consent to trade.

4.3 In summary the proposed changes the Government is making are:

- a) Street trading licences/ consents can in future be granted to children under the age of 17 years of age (unless it breaches other legislation designed to protect children) - currently the regime prohibits the granting of licence/ consent to those under this age.
- b) Local authorities will be given the discretion of granting licences for extended periods (as long as this does not create a barrier to trade in localities where there is excess demand for street trading

pitches) – currently the regime allows licences/ consents to be granted for a period of 12 months only.

- c) Electronic applications for licenses would have to be allowed and in the case of electronic applications, one photo can be submitted rather than two – currently the legislation specifies two photos to be submitted with an application made in writing.
- e) To reduce the number of discretionary grounds that a local authority currently has in regards to refusing or revoking a street trading licence to exclude grounds which would be incompatible with the Services Directive.

4.3.1 Points (a) and (c) above are straightforward to implement and the council does not anticipate any issues with these.

4.3.2 Point (b) will need careful review. The Street Trading Policy review, which was undertaken in 2012, highlighted that there is a currently a shortage of viable street trading pitches in Cambridge city centre and that supply does not currently meet demand. The Council is currently exploring establishing a number of new pitches and, in order to ensure that any changes to its policy are compliant with the Directive, it would need to be confident that supply exceeded demand before extending consents beyond 12 months.

4.3.3 Whilst point (e) above only refers to licences in the consultation (because the LG (MP) A does not set out discretionary grounds for the refusal/ revocation of consents), if these proposals are approved, the Council will need to ensure that the discretionary grounds within its Street Trading Policy for refusal /revocation of a consent are compliant with the Directive.

4.4.4 There are two discretionary grounds, which the Government are proposing to remove (because they consider that they are incompatible with the Directive) which the Council needs to be aware of with regards to its Street Trading Policy:

- a) The ability for 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.
- b) The ability for a Local Authority to refuse an application on the basis that the applicant desires to trade on fewer days each week than the minimum number specified by the Council. In addition the

ability to refuse an application on the grounds that the applicant has failed to use his consent sufficiently.

4.4.5 In relation to the discretionary ground in point 4.4.4 (a) it is the government's view that this is anti competitive and is seeking to protect the business of existing traders in a particular street or area. If this ground were removed the Council would need to amend its Street Trading Policy accordingly.

4.4.6 There are broader implications for this particular proposal, which have been identified by NABMA. It is their view that this proposal in respect of street trading must have direct relevance for markets. The Head of Tourism and City Centre Management will therefore be investigating any implications for the way in which the Council operates its markets from the proposals set out in this consultation.

4.4.7 In relation to the discretionary ground in point 4.4.4 (b) the consultation sets out that this ground could only be used if a Local Authority can evidence that there is demand to trade in the street in question for more days than the applicant wishes to trade. Given the demand for street trading pitches in Cambridge it is likely that, where appropriate, it would be acceptable for the Council to continue to use this ground.

5. CONSULTATIONS

5.1 In developing the Council's response to this consultation the Head of Tourism and City Centre Management will consult with the Chair, Vice Chair and Opposition Spokes for this Committee.

5.2 The Cambridge Street Traders Association has also been made aware of this consultation and will be providing an independent response.

5.3 Cambridgeshire Constabulary and Cambridgeshire County Council have yet to confirm if they will be providing a corporate response.

5.4 In addition to this the Head of Tourism and City Centre Management has circulated details of the consultation to local business/stakeholders including the Shopping Centre Managers and local businesses through the Love Cambridge Partnership.

5.5 Officers in the Council's legal, Streets and Open spaces and Environmental Health teams have been consulted in the development of these proposals.

6. CONCLUSIONS

6.1 The proposals as set out in this consultation represent a liberalisation of the legislation controlling street trading in the UK and will ensure that this legislation is compliant with the European Services Directive.

6.2 The Council understands that amendments to national legislation are required in order to ensure that it is compliant with the European Services Directive. However officers have real concerns about some of the proposals in particular the revised definition of what activity constitutes a pedlar for the purposes of the pedlar exemption in Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982.

6.3 Officers are concerned that this will lead to an increase in Illegal Street trading in Cambridge where the financial rewards are potentially high. In addition evidencing and enforcing illegal activity will be extremely difficult because of the proposed broad and flexible definition of a pedlar.

6.4 This is likely to be one of the key areas of concern included in the Council's formal response to this consultation.

7) IMPLICATIONS

(a) **Financial Implications** – if these proposals are approved as currently drafted there could be financial implications to the Council through the costs associated in enforcing an increase in Illegal Street trading activity.

(b) **Staffing Implications** - There would be implications for several teams across the Council including City Centre Management, Environmental Health, Streets and Open spaces and Legal. Of particular concern is that to effectively enforce the proposals as they currently stand, it is likely that additional resource would be required in the city centre management, street enforcement and legal teams.

(c) **Equal Opportunities Implications**

There are no equal opportunity implications with these proposals as they are designed to seek compliance with the European Services Directive

(d) Environmental Implications

It is possible that there could be an increase in waste from an increase in transient street trading.

(e) Procurement

There are no procurement implications to these proposals

(f) Community Safety

Given that there are no proposals in this consultation to give local authorities powers to control the number of pedlars in any one street/area, and the generous dimensions of the units proposed, there could be public safety issues encountered in busy areas if a number of these receptacles are being pushed around at the same time. Given the compact nature of the city centre and the narrow streets this is of a particular concern in Cambridge.

7) BACKGROUND PAPERS: The following are the background papers that were used in the preparation of this report:

Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982.

The consultation documents can be viewed at:

<http://bis.gov.uk/Consultations/street-trading-pedlary-laws>

8) Appendices

There are no appendices to this report.

To inspect these documents contact Emma Thornton on extension 7464

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