

WRITTEN MINISTERIAL STATEMENT

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GOVERNMENT RESPONSE TO A CONSULTATION ON STREET TRADING AND PEDLARY LEGISLATION: COMPLIANCE WITH THE EU SERVICES DIRECTIVE

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I am today publishing the Government's response to the consultation on reform of the street trading regimes in England, Wales and Northern Ireland and the pedlary regime across the UK. This will ensure compliance with the EU Services Directive. A joint consultation with the Devolved Administrations was published on 23 November 2012¹ 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.

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.

The consultation closed on 5 April 2013, having been extended twice to allow as many stakeholders as possible (particularly pedlars) to respond.

The responses from pedlars showed that they regard the Pedlars Acts as the source of their legitimacy and they were adamant that they should not be repealed but instead, the certification process amended. Local authorities, police forces, market traders and their associations all thought it essential that pedlars should continue to be certified. The Government therefore intends to make the minimum changes required to bring the regime into compliance with the Services Directive.

The Pedlars Acts, which apply across the UK, will be retained with the existing definition of pedlary. The certification process will be amended to remove a requirement for prior residency in an area and to make the required good character check an objective one that can be applied consistently across the UK. The Scottish and Northern Ireland Governments are content for these changes to apply in those

¹ <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>

nations and the Association of Chief Police Officers, Police Scotland and Police Constables Northern Ireland are working to develop a new good character check. Street trading in many parts of England and Wales is controlled, either because a local authority has chosen to adopt Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (LGMPA) or because it has its own local legislation. In these areas there are restrictions on what can be sold where and licensing regimes which allow particular traders to set up their stalls, usually for a fee.

Schedule 4 of the LGMPA contains an exemption for certified pedlars and the consultation proposed that if the Pedlars Acts were repealed, a new definition of pedlary should be included and the exemption made to refer to that. 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. In retaining the Pedlars Acts, the Government is therefore not making any changes to the definition of pedlary or to the exemption in Schedule 4 of the LGMPA.

The consultation set out other changes to Schedule 4 of the LGMPA that were necessary to bring the regime into compliance. These concerned the application process, the duration of licences and the grounds for refusing or revoking a licence or consent as well as consequential changes to other parts of the Schedule. There was general acceptance from local authorities of these changes and support for the Government’s proposals. I am therefore proposing to take these forward where they are necessary to ensure compliance.

The consultation contained two additional proposals – for an additional power to designate streets for established traders only and for new discretionary grounds for refusing a licence based on the suitability of the street – for which the consultation provided insufficient evidence to proceed and accordingly, I do not propose to pursue these.

These changes mainly affect England, Wales and Scotland because Northern Ireland has a separate street trading regime which effectively negates the pedlary regime in Northern Ireland. The Northern Ireland Government has requested that the necessary changes to its regime are made at the same time.

In Scotland, the Civic Government (Scotland) Act 1982 provides local authorities with the power to license street traders and it exempts certified pedlars from that regime in the same way as Schedule 4 of the Local Government Miscellaneous Provisions Act does in England and Wales. The Scottish Government will issue a separate response to its consultation.

Secondary legislation to effect these changes will be brought forward as soon as the Parliamentary timetable allows.